

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

**PRATT (CORRUGATED LOGISTICS),
LLC; PRATT (ALLENTOWN
CORRUGATED), LLC; and PRATT
INDUSTRIES (USA), INC.,**

**Case Nos. 4-CA-079603
 4-CA-079858
 4-CA-079976
 4-RC-080108**

and

TEAMSTERS LOCAL 773,

The above-entitled matter came on for hearing pursuant to Notice, before **ROBERT A. GIANNASI**, Administrative Law Judge, at One Independence Mall, 615 Chestnut Street, Hearing Room 3, Philadelphia, Pennsylvania, 19106, on Tuesday, January 15, 2013, at 10:00 a.m.

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<u>WITNESS</u>	<u>I N D E X</u>				<u>VOIR</u>
	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>DIRE</u>
DARREN FRY	35	45	--	--	--
CHRISTIAN SALAZAR	51 63	79	92	95	62
GUILLERMO MEJIA	98	117	132	134	--
MICHAEL MESSINA	137	150	164	--	--
MICHAEL DOLAN	165	173	--	--	--
ZSOLT HARSKUTI	180	184	--	--	--
JAY LOHRMAN	188 196	199	--	--	195
WILLIAM LEHUTA	212	216	--	--	--

E X H I B I T S

<u>EXHIBIT NUMBER</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
GENERAL COUNSEL'S		
GC-1(a) to 1(jj)	7	7
GC-2	37	37
GC-3	41	44
GC-4	55	58
GC-5	56	58
GC-6	56	58
GC-7	56	58
GC-8	61	63
GC-9	73	74
GC-10	108	110
GC-11	109	110
GC-12	111	(not offered)
GC-13	111	(not offered)
GC-14	115	117
GC-15	139	140
GC-16	149	150
GC-17	150	150
GC-18	189	190
GC-19	194	196

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<u>EXHIBIT NUMBER</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
GC-20	197	198
RESPONDENT'S		
R-1	122	123
R-2	206	(not offered)

1

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P R O C E E D I N G S

(Time Noted: 9:51 a.m.)

ADMINISTRATIVE LAW JUDGE GIANNASI: On the record.

This is a formal hearing before the National Labor Relations Board in the matter of Pratt Corrugated Logistics, Pratt Allentown Corrugating, and Pratt Industries, a single employer, and Teamsters Local 773, Cases 4-CA-079603 et al, including an R case, 4-RC-080108.

Will the parties state their appearances for the record?

MS. BROWN: Donna D. Brown, counsel for the acting General Counsel.

MR. RODRIGUEZ: David D. Rodriguez, counsel for the acting General Counsel.

MR. MEYER: Jeremy Meyer, counsel for Teamsters Local 773.

MR. STUART: Your Honor, if you please, Eric C. Stuart, S-T-U-A-R-T, Ogletree, Deakins, Nash, Smoak, and Stewart, for the Respondent Pratt Corrugated Logistics, LLC, and the Respondent Pratt Allentown Corrugating, LLC.

MR. COXSON: Your Honor, Christopher R. Coxson, also from the same firm as Mr. Stuart, representing Pratt Corrugated Logistics, LLC, and Pratt Allentown Corrugated, LLC.

MR. BALLYEAT: Your Honor, Douglas Randall Balyeat, B, as in boy, A-L-Y-E-A-T, counsel for Pratt Industries.

JUDGE GIANNASI: Very good. Do you want to submit the formal papers?

1 MS. BROWN: Yes. The formal papers have already been
2 shown to the Respondent. They are marked as General Counsel's
3 exhibit, General Counsel's Exhibit 1(a) through 1(jj).

4 **(General Counsel Exh. 1(a) to 1(jj) marked for identification.)**

5 MS. BROWN: I'd like to offer them at this time.

6 JUDGE GIANNASI: Any objection?

7 MR. STUART: No objection, Your Honor.

8 JUDGE GIANNASI: All right, received.

9 **(General Counsel Exh. 1(a) to 1(jj) received into evidence.)**

10 JUDGE GIANNASI: Any motions or preliminary matters?

11 MS. BROWN: We do have a preliminary issue with respect to
12 subpoenas, Your Honor. We served the Respondent with
13 subpoenas, subpoena duces tecums for commerce information to
14 Pratt Industries, for information and documents relating to the
15 single employer issue were served on all Respondents. And the
16 information has not been furnished.

17 Respondent filed a motion to -- petition to revoke all of
18 the subpoenas. The subpoenas concerning the single employer
19 information are virtually identical to subpoenas that we issued
20 during the -- that we served during the investigation that the
21 Board has already ruled on and denied the Respondent's petition
22 to revoke. They have denied commerce for Pratt Industries and
23 have not furnished any information with respect to commerce.

24 There is also a subpoena ad testificandum that was served
25 on Pratt Industries' CEO Brian McPheely. And as of yesterday,

1 I was advised by Mr. Stuart that he would not be here today.

2 JUDGE GIANNASI: All right. Well, I received a petition
3 to revoke which was apparently filed, efiled on late Friday,
4 but efiled with the Region, rather than with the judges
5 division, so I didn't get this petition to revoke until very
6 late yesterday. And I read it over quickly on the train coming
7 up here. You say that the Board has ruled on this already?

8 MS. BROWN: Yes. We have prepared our written response
9 with copies attached, right, a copy of the Board's ruling. The
10 Board's order is attached to our response. The Board ruled on
11 the subpoena that goes to the single employer.

12 JUDGE GIANNASI: This what you gave me is your response to
13 the petition to revoke.

14 MS. BROWN: Yes.

15 JUDGE GIANNASI: Where is the Board's ruling?

16 MR. RODRIGUEZ: It's attached. It's Exhibit B.

17 MS. BROWN: As an exhibit. This goes to the subpoena
18 concerning the single employer information. The subpoena
19 numbers are referenced, are in the order, and the subpoenas are
20 attached.

21 JUDGE GIANNASI: Okay. I mean does the Board's order
22 cover all the subpoenas here?

23 MS. BROWN: The order does not cover the second subpoenas
24 that we served, that request information concerning commerce.

25 JUDGE GIANNASI: Well --

1 MS. BROWN: Although, Mr. Stuart advised me that they
2 were, that the Employer was going to turn over some
3 information. I don't know what.

4 JUDGE GIANNASI: Well, a couple of things. First of all,
5 why doesn't this bind me at least for what -- now I can't go
6 against what the Board ruled, right?

7 MR. STUART: Your Honor, if I may, the Board ruled in
8 connection with the request subpoenas that were served during
9 the investigation of the case.

10 JUDGE GIANNASI: Yeah, but to the extent that they are the
11 same information that is required in this subpoena, how can I
12 rule against the Board?

13 MR. STUART: Well, Your Honor, as the administrative law
14 judge, of course, has control of these proceedings in terms of
15 what is relevant, what is relevant to the allegations, what
16 should be admitted. And as Ms. Brown said, we have information
17 available to produce. And our conversation has been that the
18 subpoenas are so broad and involve such an extensive amount of
19 information that we would be looking today to, to the extent
20 you decided to enforce any particular paragraph of the
21 subpoena, we would look to try to reach amicable resolution of
22 that through the production of specific documents that the
23 General Counsel is seeking. And even to discuss stipulations
24 that may make that production unnecessary.

25 I just want to point out, Your Honor, that the Pratt

1 family of companies, if you will, is a rather large
2 organization with dozens of companies. And these subpoenas
3 read literally would require people all over the country and
4 perhaps all over the world to be searching for documents and
5 records that would fill this room and then some.

6 So in the interest of that, Ms. Brown and I discussed
7 narrowing the specific classes of documents in order to speed
8 things along.

9 JUDGE GIANNASI: Well, I wish you would do that. First of
10 all, do you want me to rule now or are you going to work things
11 out, or try to work things out? I mean are you prepared to
12 proceed even without this material?

13 MS. BROWN: Yes, we are.

14 JUDGE GIANNASI: Well, here is my suggestion. I am not
15 going to go against what the Board has ruled to the extent that
16 the Board ruled on subpoenas that are the same as the subpoenas
17 here. So that's my ruling right off the bat.

18 To the extent that there is something else requested, I
19 will hear both sides. I suggest that you work things out and
20 resolve the matter because the issue here is not commerce, it
21 is single employer, because if one of the alleged single
22 employers is in commerce, then they all are, and the single
23 employer is. So the issue is not commerce. The issue is
24 single employer status. And you all know what the law is on
25 single employer status, so if the General Counsel asks for

1 information on common ownership, common labor relations, and
2 those four indicia of single employer status, it is going to be
3 relevant.

4 So I will rule on anything that is left over after you sit
5 down and try to resolve these matters. But I am prepared to,
6 if the General Counsel is, to proceed. And as I said, my
7 ruling is that to the extent that the Board ruled on the
8 identical matters requested here, my ruling is going to be the
9 same.

10 MR. STUART: Okay, Thank you, Your Honor.

11 JUDGE GIANNASI: All right.

12 MS. BROWN: As to the duces tecum. But we still have the
13 issue of the ad testificandum that was issued to Pratt
14 Industries' CEO Brian McPheely and he was served. We have a
15 copy of the certified delivery receipt.

16 JUDGE GIANNASI: And the Board did not rule on that one,
17 okay. But there is a petition to revoke on that one?

18 MR. STUART: Yes. All of the subpoenas that were --

19 JUDGE GIANNASI: Well, which is the one, the ad
20 testificandum, though. Is that Brian McPheely?

21 MS. BROWN: Yes, Your Honor.

22 MR. STUART: That's correct.

23 JUDGE GIANNASI: And you filed a response. We've got a
24 lot of documents here.

25 MS. BROWN: It's Exhibit A, Your Honor.

1 JUDGE GIANNASI: Well, but I need the petition to revoke.
2 Where is that in all these documents? I just have one
3 document. Is it the last one?

4 MS. BROWN: I'm not sure which one it is in whose
5 documents. But it is for inadequate service. And I spoke with
6 Mr. Stuart, yesterday, and asked him what that meant. And he
7 said that the Employer just simply had not been served. I
8 later faxed him a copy of the certified delivery receipt.

9 JUDGE GIANNASI: Is that the only objection to that
10 subpoena?

11 MR. STUART: The objections were both --

12 JUDGE GIANNASI: I don't see it in here. Do you want to
13 point that out to me? Just the one against the -- the ad
14 testificandum. And what do you need his testimony for?

15 MS. BROWN: Single employer, to establish the
16 interrelation of the three companies.

17 MR. STUART: Your Honor, I'll flip through the documents,
18 but just --

19 JUDGE GIANNASI: Yeah, that's my copy.

20 MR. STUART: I'll make sure you get it back.

21 JUDGE GIANNASI: Well, why don't you give me my copy and
22 you just get whatever you submitted. Is that the only reason
23 that you're objecting to that subpoena that he wasn't properly
24 served?

25 MR. STUART: Well, no, Your Honor. Mr. McPheely is the

1 CEO again of a rather large organization. And it would be
2 extraordinary to have a CEO of a company testify --

3 JUDGE GIANNASI: You have a case that says that a CEO is
4 not permitted to testify because he's a CEO?

5 MR. STUART: No, Your Honor. What we're suggesting is
6 that our position is that he was not properly served.

7 JUDGE GIANNASI: Well --

8 MR. STUART: So, therefore, his appearance today was not
9 compelled. In addition, our intention was to discuss with Ms.
10 Brown once again the specific topics of information that she
11 was seeking so that we could perhaps discuss producing the
12 individual that would have the knowledge that she is seeking,
13 as opposed to have Mr. McPheely here on some other day which
14 would inhibit his ability to run his company, and would affect
15 his schedule, which is made weeks and months in advance.

16 So our intention is obviously to cooperate with Ms. Brown
17 and with Your Honor in every way that we can. And when the
18 subpoenas as broad as these are served days before a hearing,
19 it obviously causes some degree of confusion in trying to
20 collect information, respond appropriate, and prepare for
21 trial. So we're here to cooperate to the extent that we can
22 and to go forward in a professional way.

23 JUDGE GIANNASI: All right, very good. I will let you do
24 that. Consult off the record. And, again, if I am required to
25 rule on something, I will. And I would think that you would be

1 able to get this single employer information in somehow, either
2 by stipulation or through documentary evidence. But if you
3 need somebody to testify, I will address that at the
4 appropriate time. But I am going to defer ruling on these
5 matters, except to say that I would expect you to reach
6 agreement on most of these things, if not all of those things.

7 But you say you have evidence that he was served?

8 MS. BROWN: Yes, Your Honor. I have the certified
9 receipt.

10 JUDGE GIANNASI: Okay. Well, I'm sure if it's convincing,
11 that objection will be put aside. Have you showed counsel
12 that?

13 MS. BROWN: I faxed it to his office yesterday.

14 JUDGE GIANNASI: All right. Somebody accepted service on
15 his behalf.

16 MR. STUART: Your Honor, with regards to the service, Mr.
17 McPheely was not served personally. Apparently, it was served
18 on someone in an office building where he has an office in
19 Georgia. So I hope you can appreciate that if in fact that is
20 going to be considered good service, again, days before a
21 hearing and he's not there, he's traveling. I'm sure he was
22 not aware and had he been aware, had he been properly served,
23 he would be here.

24 JUDGE GIANNASI: Well, then what you're saying is he is
25 willing to come here at an appropriate time, if necessary?

1 MR. STUART: Well, certainly if he is served properly, he
2 will come. But our intention is to try to make that
3 unnecessary and perhaps offering another witness who would have
4 knowledge of the topics that Ms. Brown is seeking to prove. As
5 you noted there are commerce questions. There is single
6 employer.

7 JUDGE GIANNASI: There are no commerce questions. At
8 least one of the Respondents has admitted commerce because you
9 participated in an election. So the only issue is single
10 employer.

11 MR. STUART: All right, thank you, Judge.

12 JUDGE GIANNASI: And, again, I want you to reach
13 agreement. I don't want to inconvenience anybody, whether it's
14 a CEO or janitor.

15 MR. STUART: And, again, we have documents, too, that we
16 intend to produce at a time convenient for Your Honor to Ms.
17 Brown that will hopefully make some of this unnecessary.

18 JUDGE GIANNASI: Right. All right, we've gotten beyond
19 that. I am deferring many of these things. So any other
20 motions or preliminary matters?

21 MS. BROWN: One. Stipulations. I propose that we
22 stipulate Respondents' position statements into the record.
23 And I think Mr. Stuart was opposed to that. He clearly
24 represents all three Respondents and he submitted four position
25 statements in the case, all of which are relevant.

1 JUDGE GIANNASI: On what? On the single employer?

2 MS. BROWN: Single employer and the discharges.

3 JUDGE GIANNASI: What's your position on that?

4 MR. STUART: Well, our position is we haven't put on the
5 defense yet, so I take it that the position statements are
6 going to be used somehow to impeach a defense that we haven't
7 even made. So I would prefer that Ms. Brown put her case on
8 and then we'll take that under advisement as we go along.
9 We'll be here for several days.

10 JUDGE GIANNASI: I think that's a good idea. But it is
11 obvious that position statements are admissible. You're an
12 agent or you represented yourself to be an agent. And so those
13 position statements under Board law are admissible. But, of
14 course, I'd like to know in particular what you're relying on
15 in those statements. And I will admit them, but I think we can
16 do that later.

17 MS. BROWN: Okay. Thank you.

18 JUDGE GIANNASI: Any other preliminary matters?

19 MR. STUART: Yes, Your Honor. Since we're talking about
20 time-saving stipulations, perhaps we can stipulate that the
21 discriminatees and each of them were offered full and
22 unconditional reinstatement. And we can put in the letters of
23 reinstatement.

24 JUDGE GIANNASI: How is that relevant?

25 MR. STUART: That would be relevant to our case in terms

1 of defending the underlying allegations.

2 JUDGE GIANNASI: I don't see how that's relevant.

3 MR. STUART: Under Ephraim Mechanical, the Board
4 specifically referenced the fact that discriminatees were
5 offered reinstatement as evidence of lack of animus.

6 JUDGE GIANNASI: And so that the order should not order
7 reinstatement?

8 MR. STUART: Yes, Your Honor. And for lack of animus, as
9 well.

10 JUDGE GIANNASI: I don't see that at all on that last
11 point. What's your view on that? They say that since they
12 have already offered reinstatement, the order should not order
13 reinstatement because they have already offered reinstatement.

14 MS. BROWN: No, we disagree. We're seeking an order
15 ordering the reinstatement. They did offer reinstatement and
16 have reinstated some of the employees voluntarily. But right
17 now there is nothing that requires them to keep them hired
18 under the same circumstances that they were before without
19 prejudice to their seniority and other rights.

20 JUDGE GIANNASI: Well, you can put that on in your case.
21 And I'm not sure that that would obviate the necessity of an
22 order because that's a compliance matter and that doesn't
23 really concern me. On animus, I really would like the citation
24 of a case that says that that shows no animus.

25 MR. STUART: Thank you, Judge.

1 JUDGE GIANNASI: All right. Does anybody want to make an
2 opening statement?

3 MR. RODRIGUEZ: Yes, Your Honor.

4 JUDGE GIANNASI: Go ahead.

5 MR. RODRIGUEZ: If it please the court, on November -- in
6 November 2011, Pratt Industries USA, Incorporated, opened a
7 corrugation plant in Macungie, Pennsylvania, and immediately
8 began hiring company drivers to deliver --

9 JUDGE GIANNASI: This was what? What was the date, again?

10 MR. RODRIGUEZ: November 2011.

11 JUDGE GIANNASI: Okay.

12 MR. RODRIGUEZ: And immediately began hiring company
13 drivers to deliver its products to customers, and to pick up
14 raw material from a Pratt Industries recycling facility in
15 Staten Island, New York. The Employer continued hiring
16 employees at a steady rate until April 2012. In fact, the last
17 employee was hired on April 16, 2012.

18 By April 19th, the Employer had hired 18 drivers, 3 of
19 them in April, and logistics manager Phaedra Powell had
20 indicated the Employer planned to hire up to 30 drivers. Then
21 suddenly everything changed. On April 19th, driver Christian
22 Salazar was hand-billed by Teamsters Local 773 Business Agent
23 Darren Fry. Salazar immediately began calling many of his
24 fellow drivers to gauge their interest in unionizing and to
25 organize a union meeting with Fry. The following day,

1 April 20th, Salazar was abruptly discharged allegedly for a
2 traffic accident that occurred in November 2011 -- excuse me,
3 Your Honor, December 2011, one for which Salazar had already
4 been disciplined.

5 However, the union meeting still went on, on April 23,
6 2011. One of the seven employees in attendance at that meeting
7 was yard jockey Guillermo Mejia. Mejia signed an authorization
8 during the meeting, took a blank one home and gave it to
9 another employee the following day. On April 24th, the same
10 day that Mejia gave another employee an authorization card in
11 the yard, the Employer discharged Mejia.

12 That night, Respondent's supervisor and agent, Francisco
13 Ortiz, told the driver that Respondent discharged Salazar
14 because of his union activity and that another named employee
15 would be fired because he supported the union. Ortiz also told
16 the driver to stay away from employees who supported the union
17 and he interrogated the employee about his union activity.
18 Ortiz would also go on to give another employee a similar
19 warning to stay away from union supporters before the day was
20 out.

21 On April 25th, the next day, Respondent divided its
22 remaining employees into small groups of four to five drivers
23 and had them attend separate meetings with consultant Jason
24 Greer. During these meetings, Greer solicited grievances from
25 employees and made implied promises to remedy them.

1 Two days later on April 27th --

2 JUDGE GIANNASI: Is Greer named in the complaint?

3 MS. BROWN: Yes, Your Honor.

4 JUDGE GIANNASI: All right. Is there any question that
5 he's an agent? Respondent? Mr. Stuart, any question that he
6 is an agent?

7 MR. STUART: Yes.

8 JUDGE GIANNASI: You contest that he's an agent?

9 MR. STUART: I'm sorry?

10 JUDGE GIANNASI: Greer. Greer is alleged to be an agent
11 what paragraph? Oh, I see, 4(b).

12 MR. STUART: We denied the allegations of his agency
13 status in 4(b) of the complaint, Your Honor.

14 JUDGE GIANNASI: All right. Is that still your position?

15 MR. STUART: At the present time, it is.

16 JUDGE GIANNASI: So you'll have to prove that.

17 MR. STUART: Yes, Your Honor.

18 MR. RODRIGUEZ: Two days later, on April 27th, Respondent
19 laid off 11 of its remaining 16 drivers. In doing so,
20 Respondent told them that there was too much work for them and
21 that it had, therefore, decided to replace them with
22 subcontracted drivers.

23 On May 2nd, the Union filed a petition to represent
24 Respondent's drivers. An election was held on June 8th,
25 resulted in 1 vote for union representation, 4 against

1 representation, and 12 determinative challenged ballots. Those
2 are the ballots of the alleged discriminatees.

3 JUDGE GIANNASI: Well, I thought there were 13.

4 MS. BROWN: One who did not vote.

5 MR. RODRIGUEZ: One discriminatee did not vote.

6 JUDGE GIANNASI: Oh, I see. Okay, so there are 12
7 challenges, but 13 alleged discriminatees?

8 MR. RODRIGUEZ: Yes, Your Honor, 2 discharges for cause
9 and 11 laid off.

10 JUDGE GIANNASI: Okay.

11 MR. RODRIGUEZ: Therefore, Your Honor, we ask that you
12 find that Respondents unlawfully discharged Christian Salazar
13 and Guillermo Mejia, and unlawfully laid off the 11 named,
14 other named discriminatees in the complaint. We also ask that
15 you find that Jason Greer unlawfully promised benefits and that
16 Francisco Ortiz interrogated an employee, prohibited two
17 employees from engaging in union -- or from supporting union
18 supporters, told an employee that Respondent had fired
19 Christian Salazar because he supported the union, and that it
20 would fire another employee because he supported the union.
21 That's all, Your Honor.

22 JUDGE GIANNASI: Well, you are also -- there is also a
23 Paragraph 7, is there not?

24 MR. RODRIGUEZ: Yes, Your Honor. We also allege that a
25 severance agreement offered to the employees who were laid off

1 on April 27th was unlawfully -- had unlawfully coercive
2 language.

3 JUDGE GIANNASI: What is that language?

4 MR. RODRIGUEZ: Your Honor, the excerpts from the
5 severance agreement are in the complaint.

6 JUDGE GIANNASI: Yeah, but what particularly? What
7 particularly? I know there are cases on the non-disparagement
8 section. Is that what you're relying on?

9 MS. BROWN: The non-disparagement, the confidentiality,
10 not allowed to disclose it to anyone except your spouse.

11 JUDGE GIANNASI: All right. There is no evidence on that,
12 right? You're just going to put --

13 MS. BROWN: Put it in the agreement.

14 JUDGE GIANNASI: Put it in the agreement. And there are
15 cases in this area.

16 MS. BROWN: Yes.

17 JUDGE GIANNASI: Okay. All right, are you going to be
18 speaking up for the Union? You haven't made an appearance.

19 MR. BALYEAT: I did when we first introduced ourselves.

20 JUDGE GIANNASI: Oh, okay.

21 MR. BALYEAT: I'm counsel for Local 773.

22 JUDGE GIANNASI: All right. Do you want to say anything
23 in an opening statement?

24 MR. BALYEAT: No.

25 JUDGE GIANNASI: Do you want to make an opening statement?

1 MR. STUART: Yes, thank you very much, Your Honor. This
2 is not a garden variety case where an employer discharges union
3 supporters and goes about hammering home an anti-union message,
4 as my colleague has suggested. And there are several things
5 relevant here that are not immediately evident from the
6 pleadings.

7 First, I would like to start by giving you a little bit
8 better explanation. Pratt Corrugated Logistics, LLC, provides
9 trucking services at a number of locations in the United
10 States. The instant complaint involves the companies in
11 Macungie, Pennsylvania, trucking operations. Corrugated
12 Logistics commenced its operations in Macungie in the latter
13 part of 2011. And from the commencement of the operations to
14 the present day, Corrugated Logistics has always utilized
15 third-party trucking carriers to move product and to assist it
16 in its transportation services that it provides, has always
17 used third-party carriers. Now the company also used direct
18 hire drivers.

19 JUDGE GIANNASI: This is in this location or at other
20 locations?

21 MR. STUART: In every location that the company operates.
22 The instant complaint, of course, is in connection with
23 Macungie. But in terms of the company --

24 JUDGE GIANNASI: This is Pratt Corrugated Logistics, LLC?

25 MR. STUART: Yes, a trucking company.

1 JUDGE GIANNASI: Okay. But did they subcontract at this
2 location since they opened it?

3 MR. STUART: Yes. Yes, Your Honor.

4 JUDGE GIANNASI: Okay.

5 MR. STUART: My comments are now in connection with the
6 Macungie operation.

7 JUDGE GIANNASI: This location, yeah.

8 MR. STUART: In connection with this location, the company
9 has always utilized third-party carriers. And they also used
10 their own direct hire drivers. And they commenced the trucking
11 operations towards the latter part of 2011.

12 They hired essentially one driver to start. Now the
13 operations became successful. There was a lot of product that
14 needed to be moved. Much of this was not able to be
15 anticipated because the facility was a new facility with an
16 uncertain book of business, if you will.

17 Somewhat a victim of their own success, the operation
18 expanded rapidly and the demand on the transportation services
19 increased. Additional drivers were hired. Months into this
20 new start of operation, it became apparent that the ability of
21 the on-site management team to effectively operate, to perform
22 the services, and to manage its fleet and equipment was being
23 outstripped. The company was incurring extraordinary cost for
24 damage, vehicle damage and other operational problems that were
25 exacerbated by the start-up of a new operation.

1 A decision was then made that the company would rebalance
2 its level -- the number of drivers and the level of the
3 third-party carriers that were already there. So,
4 specifically, the company reduced the number of drivers and
5 increased the usage of the third-party carriers, their
6 third-party partners that were being utilized in Macungie. The
7 decision was not motivated by anti-union animus or employees'
8 organizing activities.

9 There are several facts here that are relevant, that are
10 undisputed and, therefore, won't change throughout the case.
11 And that is the petition was filed in May, after the decision
12 to rebalance the drivers had already been implemented. The
13 parties entered into a stipulated election agreement in May, in
14 the unit that was petitioned for by the Petitioner. The
15 parties and the regional director in that stipulation agreed
16 that the employer of the employees was Pratt Corrugated
17 Logistics. There was no question at that time about single
18 employer or any of the other -- or many of the other issues
19 that are at issue here. And I'll get to that in a minute.

20 The regional director approved the stipulated election
21 agreement. The election was conducted on June 8th. No
22 objections to the election were filed with regards to any
23 conduct that occurred during the critical period.

24 Importantly, the complaint does not allege that any Pratt
25 Corrugated Logistics employee engaged in any 8(a)(1) conduct or

1 uttered any anti-union statements, surveilled employees,
2 coerced employees, or interrogated employees. And, indeed, the
3 complaint allegations for a case of this magnitude are
4 extremely sparse. The principal allegation in sections -- in
5 Paragraph 5(a) and (b) of the complaint is that Francisco Ortiz
6 made certain statements to one Corrugated Logistics driver in
7 April of 2012. Mr. Ortiz is not employed by Corrugated
8 Logistics and that is undisputed, and is not a supervisor under
9 Section 2(11) of the Act.

10 JUDGE GIANNASI: You're contesting that -- you're saying
11 that he's not a supervisor?

12 MR. STUART: That is correct, Your Honor. This was
13 disclosed --

14 JUDGE GIANNASI: What was he? What was he? I assume
15 we'll hear from him. What was he doing there?

16 MR. STUART: He was at best a lead person.

17 JUDGE GIANNASI: Oh, he was working at that location?

18 MR. STUART: He was working at that location for a
19 different company, Pratt Allentown Corrugated. He was not
20 employed at any time by Corrugated Logistics. This was known
21 to the Charging Party and counsel for General Counsel early on
22 in the history of this case. And the Charging Party's tactical
23 response to this significant dilemma was to amend the charge to
24 assert single employer status.

25 Of note, the amended unfair labor practice charges do not

1 contain any new factual allegations of wrongdoing. The amended
2 charges simply assert single employer status for three various
3 entities. And in sum, this is a litigation tactic designed to
4 make Corrugated Logistics responsible --

5 JUDGE GIANNASI: Well, but if I find that it is a single
6 employer and Ortiz was a -- was he a supervisor of this other
7 company?

8 MR. STUART: No, sir.

9 UNIDENTIFIED SPEAKER: A lead man.

10 JUDGE GIANNASI: All right, we will litigate that and --

11 MR. STUART: Yes, Your Honor.

12 JUDGE GIANNASI: If you win and he is a lead man, it
13 doesn't matter. But if it is a single employer and he is a
14 supervisor of another company, and I find that it is a single
15 employer, you are liable for his statements.

16 MR. STUART: Very good, Your Honor.

17 JUDGE GIANNASI: That's why we are here.

18 MR. STUART: Yes.

19 JUDGE GIANNASI: And I don't care whether the charge is
20 amended or not. What I have here is the complaint, the
21 allegation of single employer status. I don't care about the
22 history of it. How many employees do you have at this location
23 now?

24 MR. STUART: Employed by who, sir?

25 JUDGE GIANNASI: By Corrugated Logistics.

1 MR. STUART: Corrugated Logistics has about, with the
2 returning discriminatees, about eight or nine drivers, I
3 believe. I could get an exact number for you.

4 JUDGE GIANNASI: No, that's all right. I just wanted to
5 know.

6 MR. STUART: It was already stated that unconditional
7 offers of reinstatement were made. Including to discriminatee
8 Christian Salazar, who rolled over his tractor and trailer on a
9 clear day --

10 JUDGE GIANNASI: Well, why did you take him back? You say
11 that he did something bad.

12 MR. STUART: Yes, Your Honor.

13 JUDGE GIANNASI: And that's why he was discharged. Well,
14 why did you take him back?

15 MR. STUART: Your Honor, that was a decision made in
16 consultation with counsel for General Counsel in connection
17 with the overall litigation of the case including a threatened
18 10(j) proceeding, as you know.

19 JUDGE GIANNASI: Well, if you're saying that he was
20 properly discharged for doing something bad, having an
21 accident, why would you take him back? It seems to me that
22 when you put on your evidence of reinstatement, I can make
23 several inferences. One is that whatever he did was not so bad
24 that he was disqualified from coming back. I don't care
25 whether it was a settlement or not. You don't take people back

1 when you say that they're involved in a serious accident.

2 MR. STUART: Well, Your Honor, I would hope that you
3 wouldn't make that inference after you hear the evidence. And
4 I would say that when the government wants to proceed under a
5 10(j) mandate that companies --

6 JUDGE GIANNASI: Well, they have to prove a 10(j) before
7 the court judge.

8 MR. STUART: That companies today with that extremely low
9 burden of proof need to take, which is much less than the
10 burden of proof that Your Honor will apply under Board law,
11 take --

12 JUDGE GIANNASI: I'm not so sure. They have to show
13 irreparable harm to get an injunction, don't they?

14 MR. STUART: There are multiple factors and we can direct
15 Your Honor to the cases in our brief, but --

16 JUDGE GIANNASI: Listen, this is beside the point really.
17 Your allegation is that this guy was fired for having a serious
18 accident. Okay?

19 MR. STUART: Yes, thank you.

20 JUDGE GIANNASI: And, of course, I'll hear the evidence.

21 MR. STUART: Thank you very much, Your Honor. As well as
22 the discriminatee Guillermo Mejia, and you will hear the
23 testimony on his misconduct and poor performance which resulted
24 in his discharge. And as my colleague indicated, these were
25 discharges, as he put, for cause. And that's the case that we

1 will be putting on for Mr. Mejia.

2 So, in sum, after hearing all of the evidence, we would
3 respectfully request that Your Honor find that the General
4 Counsel has not met its burden of proof in these proceedings.

5 I'd like to make a note about our affirmative defenses.
6 Two discriminatees, Tyler Donnely and Brian Fritzinger, were
7 offered and executed and agreed to severance agreements, which
8 included a general release. These individuals accepted the
9 benefits of the severance --

10 JUDGE GIANNASI: But what has that got to do with this
11 case? I mean that's a compliance matter at best.

12 MR. STUART: Well, look, it's our position, Your Honor,
13 that under Independent Stave, that this is a matter that can
14 and perhaps should be litigated in matter under the Independent
15 Stave factors dependent on the counsel for the General
16 Counsel's position on the efficacy of that release. If the
17 releases are valid, both of those discriminatees would not be
18 entitled to any back pay. But this is the proceeding in
19 which --

20 JUDGE GIANNASI: Yeah, well, that's true. But I mean
21 that's a compliance matter, isn't it?

22 MR. STUART: It could be. But as we --

23 JUDGE GIANNASI: Well, I will certainly need cases on
24 that. I mean you say that this evidence shows lack of animus,
25 you earlier said lack of animus, and now you say that somehow

1 Independent Stave, which provides guidance on accepting
2 settlements provides an affirmative defense. You know I've
3 only been an ALJ for 36 years and in the field 47 years, but I
4 haven't seen a case. So I would be interesting in your
5 citation of authorities on that.

6 MR. STUART: Okay, Your Honor, and we have them. So,
7 again, both accepted severance payments, executed releases, so
8 that would certainly affect any remedy that Your Honor might
9 direct. So, therefore, one question that we have is counsel
10 for the General Counsel's position on the releases, which is
11 one of the Independent Stave factors, which we could get into
12 later. With regards to the, to the settlement agreement and
13 releases that are alleged --

14 JUDGE GIANNASI: I don't understand. They are not
15 alleging settlement agreements. You mean that you are
16 alleging?

17 MR. STUART: The complaint asserts that paragraphs of a
18 settlement agreement and release --

19 JUDGE GIANNASI: Well, yeah, I see, yeah. Okay.

20 MR. STUART: Are unlawful. And we are just pointing out
21 that those agreements contain a savings clause which would
22 allow any offending portion to be excised and the remainder of
23 the agreement enforced.

24 JUDGE GIANNASI: Well, do you agree to excise those
25 clauses?

1 MR. STUART: Well, we haven't done that yet, no.

2 JUDGE GIANNASI: Well, then I think if you wanted to do
3 that, we could settle that part of the complaint.

4 MR. STUART: We'll take that under advisement and perhaps
5 that could occur.

6 JUDGE GIANNASI: Otherwise, you know, the law is pretty
7 clear. I don't know if there are any cases saying that the
8 saving, you know, whatever clause you are talking about
9 actually provides a defense. I don't know about that. I don't
10 know if there are any cases on that. But if you agree to take
11 those clauses out, they will probably settle that part of the
12 case.

13 MR. STUART: Well, that's certainly something that will be
14 discussed.

15 JUDGE GIANNASI: It doesn't take much evidence -- this
16 issue doesn't take much evidence. But, obviously, I have to
17 address that issue and we all have to address that issue.

18 MR. STUART: Yes, Your Honor. And I don't believe that
19 the case law on voluntary contractual undertakings between
20 parties is that firmly settled, as well as the case law that
21 involves handbooks, personnel policies, and the like.

22 JUDGE GIANNASI: Yeah, I know it depends on what language
23 you use and, of course, that's why lawyers are employed.

24 MR. STUART: Yes, and thankfully so.

25 JUDGE GIANNASI: To right these rules so that they are not

1 offended.

2 MR. STUART: Your Honor, and --

3 JUDGE GIANNASI: But, you know, and I don't know the cases
4 right off-hand, but obviously there is a lot of case law on the
5 language used in these clauses.

6 MR. STUART: And lastly, Your Honor, with regards to one
7 of our affirmative defenses, I'd like to preface it with the
8 statement that I have the utmost respect for this tribunal and
9 for the National Labor Relations Board as a practicing labor
10 lawyer for 25 years. One of our affirmative defenses involves
11 whether the Board was properly constituted. And our
12 affirmative defense in an abundance of caution --

13 JUDGE GIANNASI: You know I can't address that. The Board
14 has addressed it in decisions and they have rejected it. And
15 so I'm not going to consider that.

16 MR. STUART: And certain --

17 JUDGE GIANNASI: If the matter is not resolved by the
18 courts before this litigation is over, then you can preserve
19 it.

20 MR. STUART: Yes. And that was only our intention was to
21 create a record of the existence of the defense in order to
22 preserve it, if necessary, or appropriate in the future. And
23 as we know, the Noel Cannon case is being litigated through the
24 federal courts. That would perhaps provide us some guidance on
25 whether the recess appointments --

1 JUDGE GIANNASI: Right.

2 MR. STUART: -- were proper and that the Board is, in
3 fact, properly constituted and able to conduct its business
4 under the United States Supreme Court decision in Process
5 Steel. So with that, I thank you for the opportunity.

6 JUDGE GIANNASI: All right. You want to call your first
7 witness?

8 MR. RODRIGUEZ: May we take a brief recess, please?

9 JUDGE GIANNASI: Okay, five minute recess.

10 **(Whereupon, a brief recess was taken.)**

11 JUDGE GIANNASI: On the record.

12 MS. BROWN: Call Darren Fry.

13 MR. STUART: Your Honor, at this time, we would like to
14 request that the witnesses be sequestered.

15 JUDGE GIANNASI: All right. Sit down here. All right, I
16 normally grant the rule.

17 MR. STUART: Thank you, Your Honor.

18 JUDGE GIANNASI: And I don't have it in front of me, but
19 another one of my cases a long, long time ago is the Greyhound
20 case and it is now famous for having the Board sequestration
21 rule. So I will apply the Greyhound rule to this case. And
22 the parties will enforce the rules and find a place for the
23 witnesses to be -- witnesses can't hear the testimony of other
24 witnesses. That is, in short, what we are talking about. So
25 we'll be off the record.

1 **(Discussion off the record.)**

2 JUDGE GIANNASI: Raise your right hand.

3 (Whereupon,

4 **DARREN FRY,**

5 was called as a witness by and on behalf of the General Counsel
6 and, after having been duly sworn, was examined and testified
7 as follows:)

8 JUDGE GIANNASI: Be seated, please. Give your name and
9 address to the reporter.

10 THE WITNESS: My name is Darren Fry. I live at 458 East
11 Emmaus Avenue, in Allentown, Pennsylvania, 18103.

12 **DIRECT EXAMINATION**

13 BY MS. BROWN:

14 Q Mr. Fry, by whom are you employed?

15 A I work for Teamsters Local 773.

16 Q What is your position?

17 A I am a business agent.

18 Q Okay. And would you briefly describe your duties?

19 A I negotiate labor contracts and enforce labor contracts.
20 And I also from time to time do organizing activities.

21 Q And did the union try to organize the drivers at Pratt
22 Corrugated Logistics in Macungie, Pennsylvania?

23 A Yes.

24 Q In connection with that organizing campaign, did you go
25 out to the facility?

1 A Yes.

2 Q How many times?

3 A I went out for the purposes of organizing --

4 Q Yes.

5 A -- I made at least two trips.

6 Q Okay. And when is the first time you went?

7 A The first time was on April 13th.

8 Q And what did you do? Where did you go?

9 JUDGE GIANNASI: This is in 2012?

10 THE WITNESS: Yes, that is correct. I went to the end of
11 their driveway. They are at the end of a cul-de-sac. And I
12 sat in the cul-de-sac and I watched for Pratt trucks to come
13 out of the driveway.

14 BY MS. BROWN:

15 Q And did trucks come out?

16 A Yeah. On that day, particular day, I only caught one or
17 came across one, and I handed them a leaflet.

18 Q Did you have any conversation with that person?

19 A No, not really. I just handed them the leaflet and let
20 them go on its way.

21 Q And how long were you out there?

22 A I was only out there probably under an hour, I believe,
23 that first day.

24 Q And when did you go back the second time?

25 A I went back the following Thursday. I believe that was

1 April 19, 2012.

2 Q And what did you do? Where did you stand?

3 A I did the same thing. I parked in the cul-de-sac, the
4 same place, stood at the same end of the driveway place, and I
5 handed a leaflet to two drivers that morning.

6 Q Okay. And do you know the names of the two drivers?

7 A The one was Christian Salazar. And I believe the other
8 one was Dennis Cortez.

9 **(General Counsel Exhibit 2 marked for identification.)**

10 BY MS. BROWN:

11 Q I'm showing you what's been marked as General Counsel's
12 Exhibit 2 for identification. Do you recognize that?

13 A Yes.

14 Q And what is that?

15 A That is the leaflet that I handed out to the drivers at
16 the end of the Pratt driveway.

17 MS. BROWN: I'd like to offer General Counsel's Exhibit 2
18 into evidence.

19 JUDGE GIANNASI: Any objection?

20 MR. STUART: No objection.

21 JUDGE GIANNASI: Received.

22 **(General Counsel Exhibit 2 received into evidence.)**

23 BY MS. BROWN:

24 Q So you talked to -- you say one of the drivers was
25 Christian Salazar?

1 A That's correct.

2 Q Did you have any conversation with him, when you gave him
3 the leaflet?

4 A Briefly, I did. Christian had --

5 MR. STUART: Objection, relevance.

6 JUDGE GIANNASI: Overruled.

7 THE WITNESS: When I handed the flyer to Christian, he
8 looked at it and said, wow, we've been needing a union here.

9 BY MS. BROWN:

10 Q And did you hear from him after, again after that meeting?

11 A Yes. He had called me later that morning.

12 Q And what was that call about?

13 A He asked me about --

14 MR. STUART: Objection, hearsay.

15 JUDGE GIANNASI: Overruled.

16 THE WITNESS: He asked me about the flyer and how they
17 could go about, you know, unionizing there at Pratt.

18 BY MS. BROWN:

19 Q Okay. And what did you tell him?

20 A I told him we typically start with a meeting, you know,
21 with him and a couple of his trusted co-workers, and we explain
22 the process to them. I also explained the first step was
23 gather the representation cards and then submitting for an
24 election.

25 Q And how did your conversation with him end, do you

1 remember?

2 A Well, in explaining the union election process, I
3 explained the 50 percent plus 1 rule that you need to have a
4 successful organizing drive. So Christian had determined that
5 he wanted to get about 10 drivers together, because that would
6 have been the majority of the drivers. And he told me he'd
7 give me a call back when he has some drivers ready to meet.

8 Q Okay. Did he give you another call?

9 MR. STUART: Your Honor, respectfully --

10 JUDGE GIANNASI: I'm not going to find that what he said
11 was true.

12 MR. STUART: Oh, thank you.

13 BY MS. BROWN:

14 Q Did he contact you again?

15 A Yes.

16 Q And when was that?

17 A He called me later that same day and said that he has 7
18 drivers so far, but that he was still shooting for 10 and he'd
19 probably give me a call the next day.

20 Q Okay. And did he give you a call the next day?

21 A Yes, he called me the next day. I believe that was a
22 Friday. I believe it was Friday, the 20th. And he says that
23 he has, you know, he has 10 drivers that are willing to meet
24 with me.

25 Q Did you decide where and when to meet during that

1 conversation?

2 A Yes, we did. We had set up a meet time and location of
3 8:00 p.m. the following Monday, which was April 23rd, I
4 believe, and we were to meet at the local McDonald's, which was
5 really just right down the street.

6 Q Did you later change the location of that meeting?

7 A We did.

8 Q To where?

9 A We changed it to another diner further up the street. I
10 believe it is called the Starlight Diner.

11 Q And why did you change the location?

12 MR. STUART: Objection.

13 JUDGE GIANNASI: Sustained.

14 BY MS. BROWN:

15 Q How many employees did you meet with on April 23rd?

16 A I believe -- I don't remember the exact number, but I
17 believe it was about eight.

18 Q And was one of those employees named Guillermo Mejia?

19 A Yes.

20 Q What happened at the meeting?

21 A Well, you know, again I just reviewed the process and I
22 handed out representational cards. Everybody at the meeting
23 signed a representational card and a couple of them took a
24 couple of extras for their co-workers that weren't present.

25 Q Did you have another meeting, union meeting with the

1 employees?

2 A Yes, we did. Our next meeting was the following Saturday.

3 And I believe that would have been April 28th.

4 Q And how many people showed up for that meeting?

5 A I don't remember the exact number. I did have a sign-in
6 sheet. Eight or ten.

7 Q Do you know if Pratt Industries has a website?

8 A Yes, they do.

9 Q Okay. And how do you know that?

10 A Well, it is referenced in their employee manual. And so I
11 checked it out and looked at it.

12 Q So you visited the site?

13 A Yes.

14 Q When did you visit the site?

15 A This past weekend.

16 **(General Counsel Exhibit 3 marked for identification.)**

17 MS. BROWN: I'm showing you what's been marked as General
18 Counsel Exhibit 3.

19 UNIDENTIFIED SPEAKER: Do you have a copy for me, please?
20 Thank you.

21 MS. BROWN: And I have more, but they are black and white.

22 UNIDENTIFIED SPEAKER: I don't care about that. I don't
23 care if it is --

24 MS. BROWN: I have some in my office.

25 UNIDENTIFIED SPEAKER: Oh, you do. Okay, well, then that's

1 fine. We're okay.

2 BY MS. BROWN:

3 Q Okay. Will you take a look through that, please? Have
4 you seen this exhibit before?

5 A I have seen -- I've looked at all these pages.

6 Q And did you look at all those pages on the website?

7 A Yes.

8 Q Did you go tab by tab, page by page?

9 A Yes, I did.

10 Q Can you tell us if this is, the photographs in General
11 Counsel 3, if this is a representation, this is what you saw on
12 the website?

13 A Yes, it is.

14 MS. BROWN: I'd like to offer General Counsel's Exhibit 3
15 into evidence.

16 JUDGE GIANNASI: Any objection?

17 MR. STUART: We object, Your Honor, in that this document
18 was not even in existence at the time of the alleged unfair
19 labor practices. Mr. Fry's testimony was that he visited the
20 facility several days ago.

21 MS. BROWN: He visited the website.

22 MR. STUART: He visited the website several days ago. So,
23 therefore, there is nothing in this document that would be
24 relevant to unfair labor practices occurring some months ago,
25 allegedly occurring some months ago.

1 JUDGE GIANNASI: Well, I take it you are putting this in
2 for single employer?

3 MS. BROWN: Yes, Your Honor. The website was changed or
4 upgraded in 2013, but it shows the integration, the integrated
5 nature of the business.

6 JUDGE GIANNASI: So what's your objection?

7 MR. STUART: We submit that the corporate structure as it
8 currently exists is not relevant to unfair labor practices
9 alleged to have occurred nine, ten months ago.

10 JUDGE GIANNASI: Well, you can argue that. You can argue
11 that. You may have evidence that there was a different website
12 in 2012, I mean, you know. But this is certain relevant.

13 MR. STUART: Are there specific pages that we're being
14 directed to?

15 JUDGE GIANNASI: Yeah, would you identify the specific
16 pages?

17 MS. BROWN: Every page shows the integrated nature of the
18 operations. If you look through, you'll see the maps, the
19 addresses showing Pratt Corrugated Logistics' address in
20 Conyers, Georgia. The entire --

21 JUDGE GIANNASI: Does it show the one that's involved
22 here?

23 MS. BROWN: Yes, it does.

24 JUDGE GIANNASI: Corrugated Logistics Division?

25 MS. BROWN: Yes, Your Honor.

1 THE WITNESS: Yes.

2 MS. BROWN: Yes, Logistics is at page, let's see, I can
3 number the pages if that would help, two, three, four, Page 5.

4 JUDGE GIANNASI: Well, you know, I'm going to receive this
5 in evidence and let you argue about the weight to be given it.
6 I mean I think I can make the inference that this is how the
7 company operates. And if it operated differently at this time
8 in April of 2012, you can tell me.

9 MR. STUART: Yes, Your Honor. And I would, and certainly
10 if that's your ruling, I understand that.

11 JUDGE GIANNASI: I mean your company, your client put this
12 up on the website.

13 MR. STUART: Right. And I just want to point out that the
14 words, just because the word corrugated and/or logistics appear
15 together does not mean that that references Pratt Corrugated
16 Logistics, LLC, the Respondent here.

17 JUDGE GIANNASI: Hey, listen, let's not dance around this.

18 MR. STUART: Your Honor, I'm not -- Your Honor --

19 JUDGE GIANNASI: If you are representing something on a
20 public website, I can make the normal inferences that somebody
21 would make. Now you can argue --

22 MR. STUART: We'll put our evidence on.

23 JUDGE GIANNASI: -- but I'm receiving this in evidence.

24 **(General Counsel Exhibit 3 received into evidence.)**

25 MS. BROWN: I have nothing further for Mr. Fry.

1 JUDGE GIANNASI: Cross-examine.

2 MR. STUART: Yes, Your Honor. At this point, we'd like to
3 receive any and all affidavits supplied by Mr. Fry in
4 connection with the unfair labor practice charges and an
5 opportunity to review those affidavits.

6 MS. BROWN: Let the record show I've given Mr. Stuart, Mr.
7 Coxson, and Mr. -- I'm sorry?

8 MR. BALLYEAT: Balyeat.

9 MS. BROWN: Balyeat.

10 MR. BALLYEAT: Thank you.

11 MS. BROWN: Copies of the five-page affidavit of Darren
12 Fry.

13 JUDGE GIANNASI: All right. We're not going to take a
14 recess. This was not lengthy testimony. And so we'll be off
15 the record while you read it.

16 MR. STUART: All right, thank you, Your Honor.

17 **(Off the record.)**

18 JUDGE GIANNASI: Cross?

19 MR. STUART: Thank you, Your Honor.

20 **CROSS-EXAMINATION**

21 BY MR. STUART:

22 Q Mr. Fry, I'm Eric Stuart and I represent the Respondent,
23 Corrugated Logistics. We know each other from our various jobs
24 and, you know, we have met before.

25 A Correct.

1 Q And I know you because we have negotiated some contracts.

2 JUDGE GIANNASI: Just get to the point, please.

3 MR. STUART: Okay. Thank you, Your Honor.

4 BY MR. STUART:

5 Q It's correct, Mr. Fry, that you were the union
6 representative responsible for filing the petition with regards
7 to Corrugated Logistics in Macungie, Pennsylvania, is that
8 correct?

9 A Yeah. I called them Pratt Logistics.

10 Q It's also correct that when you filed the petition, you
11 filed the petition for the employer that you designated as
12 Pratt Corrugated Logistics, isn't that correct? Do you need to
13 see the petition?

14 JUDGE GIANNASI: Isn't the petition in the record?

15 MS. BROWN: It's in the record.

16 JUDGE GIANNASI: What's the point?

17 MR. STUART: Mr. Fry has provided testimony about websites
18 and other things. And he says that he calls it Pratt this or
19 that.

20 JUDGE GIANNASI: Well, it doesn't matter what he calls it.
21 It matters what I call it after litigation.

22 MR. STUART: Yes, Your Honor. And I'm trying to probe his
23 testimony including the veracity and credibility of it.

24 JUDGE GIANNASI: Come on, let's get to the point. This is
25 simply background. And whatever argument you want to make

1 about what name the petition was filed under, you've got the
2 documents to make that argument.

3 MR. STUART: All right, thank you, Your Honor.

4 JUDGE GIANNASI: Just get to the point. He testified
5 about some meetings that he had.

6 MR. STUART: All right, and I will.

7 JUDGE GIANNASI: It's usually not controversial materials
8 here. This hearing is not going to be as long as you want it
9 to be. It's going to be as long as is required to get relevant
10 evidence in.

11 MR. STUART: Yes, Your Honor. And I'm not trying to waste
12 your time or the time of any of the people that are here.

13 JUDGE GIANNASI: Right. Well, get to the point here. He
14 testified about very few matters.

15 MR. STUART: Yes.

16 JUDGE GIANNASI: Background matters.

17 MR. STUART: Yes. Thank you, Your Honor.

18 BY MR. STUART:

19 Q Mr. Fry, your testimony was that you stationed yourself at
20 a cul-de-sac in order to pass out a flyer, correct?

21 A Yes.

22 Q It's true, is it not, that the facility where Corrugated
23 Logistics operates is also shared with Pepsi? That's true,
24 isn't it?

25 A I don't believe so.

1 Q Oh, I'm sorry, Coca-Cola.

2 A At the time of the complaint, yes.

3 COURT REPORTER: You have to keep your voice up.

4 THE WITNESS: Okay. Yes.

5 BY MR. STUART:

6 Q So at this shared facility, there are trucks going in and
7 out, being driven by drivers. Were those doing business with
8 Coca-Cola and also Corrugated Logistics, correct?

9 A Yes.

10 Q Okay, thank you. Now you didn't put leaflet on cars or
11 anywhere else during your meetings -- during your visits, the
12 two visits to the Macungie facility, correct?

13 A That's correct.

14 Q And your entire involvement on the first visit was to hand
15 out a leaflet to one driver on your April 13 visit, correct?

16 A Yes.

17 Q And in fact you never saw that driver again, correct?

18 A Yes.

19 Q Now I take it when you went to the facility on April 13th,
20 you didn't put up a sign that you represented --

21 JUDGE GIANNASI: You know, listen, this will go a lot
22 faster if you don't try to disprove a negative. I mean he
23 didn't testify about that, so the record is silent on that. So
24 whatever argument you want to make, you can say that he did not
25 testify such and such.

1 MR. STUART: Okay, Your Honor.

2 JUDGE GIANNASI: You don't have to go through all of this
3 rigmarole.

4 MR. STUART: Okay. Thank you, Judge.

5 JUDGE GIANNASI: There's a lot of things that he didn't
6 testify about. And if they are relevant, you can point out
7 that he didn't testify about such and such. I'm interested in
8 what he did testify about and what you contest about that.

9 BY MR. STUART:

10 Q It's true, Mr. Fry, that on any of your visits to the
11 facility in April of 2011 that you had no contact with any
12 Corrugated Logistics management, is that true, sir?

13 A I don't believe that I had any contact with them.

14 Q Okay, thank you.

15 A Not that I know of.

16 MR. STUART: I have no further questions.

17 JUDGE GIANNASI: All right, any redirect?

18 MS. BROWN: No, Your Honor.

19 JUDGE GIANNASI: Yes?

20 MR. STUART: We have other -- other counsel may --

21 JUDGE GIANNASI: Oh, I only want one counsel per side is
22 going to question. We're not going to have different --

23 MR. BALLYEAT: So counsel for Pratt Industries will not be
24 able to ask questions?

25 JUDGE GIANNASI: On the single employer issue, you can,

1 but not on this, no.

2 MR. STUART: All right. Then may we take a moment to
3 confer briefly?

4 JUDGE GIANNASI: Sure. If you have questions, you can
5 pass them onto your lead counsel. But I'm not going to have
6 three people ask question about somebody who testified for
7 about five minutes.

8 MR. STUART: No, we weren't intending to do that, Judge, I
9 can assure you.

10 JUDGE GIANNASI: All right, off the record.

11 **(Discussion off the record.)**

12 JUDGE GIANNASI: Any redirect?

13 MS. BROWN: No, Your Honor.

14 JUDGE GIANNASI: All right. You're excused.

15 THE WITNESS: Thank you, Your Honor.

16 **(Witness excused.)**

17 MS. BROWN: I call Christian Salazar.

18 JUDGE GIANNASI: Raise your right hand.

19 (Whereupon,

20 **CHRISTIAN SALAZAR,**

21 was called as a witness by and on behalf of the General Counsel
22 and, after having been duly sworn, was examined and testified
23 as follows:)

24 JUDGE GIANNASI: Be seated, please. Give your name and
25 address to the reporter and speak up.

1 THE WITNESS: My name is Christian Salazar. I live at
2 511 West Highland Terrace, Nazareth, Pennsylvania, 18064.

3 COURT REPORTER: Spell your last name?

4 THE WITNESS: I'm sorry. Salazar is S-A-L-A-Z-A-R.

5 JUDGE GIANNASI: Ms. Brown, I just want to make one point
6 about this General Counsel 3. In your brief, you are going to
7 point out specifically what you're relying on.

8 MS. BROWN: Yes, I am.

9 JUDGE GIANNASI: And I don't care what glitter this has,
10 I'm interested in common management, common labor relations,
11 those types of things that legally are required to show single
12 employer status.

13 **DIRECT EXAMINATION**

14 BY MS. BROWN:

15 Q Mr. Salazar, did you work for a company known as Pratt
16 Corrugated Logistics?

17 A Yes, I did.

18 Q From when to when?

19 A From November 11th to April 20, 2012.

20 Q And what was your job there?

21 A At first, I was a truck driver. I also went through a
22 short period of time of dispatcher and onboard computer
23 installations.

24 Q Onboard computer installations, what does that involve?

25 A Well, basically, first you've got to get certified. I did

1 an online certification course. And basically just putting the
2 computers in the trucks, which pretty much kind of relates the
3 office to the driver where they are by GPS tracking, and the
4 time they started, the time they left the facility, the time
5 they arrived the delivery point, the time they left the
6 delivery point, and so on, so forth.

7 Q And when did you receive your certification?

8 A February 2012.

9 Q Who paid for that course?

10 A Pratt.

11 Q What hours did you work?

12 A As a truck driver or in dispatch?

13 Q Yes, as truck driver.

14 A It would range anywhere from -- I would start anywhere
15 from 5:00 in the morning to 7:30 in the morning. And I would
16 put a 14-hour day in, for the most part a 14-hour day, but it
17 was never shorter than 12.

18 Q Who did you report to as a driver?

19 A Phaedra Powell.

20 JUDGE GIANNASI: Who?

21 THE WITNESS: Phaedra Powell.

22 JUDGE GIANNASI: Is that name in the complaint?

23 THE WITNESS: Yes, it is, Your Honor.

24 JUDGE GIANNASI: Oh, okay.

25 BY MS. BROWN:

1 Q Okay. What was her title?

2 A She was a logistics manager.

3 Q Can you tell us what kind of deliveries and pickups you
4 did?

5 A Delivering, we deliver corrugated paper to companies for
6 boxes, corrugated paper that were boxes. We'd deliver to
7 companies.

8 Q To where? Where did you deliver?

9 A A lot of New York, a lot of New Jersey, Pennsylvania.

10 Q Were you making deliveries to -- were you going to other
11 Pratt facilities or to customers of Pratt?

12 A We would go to other Pratt facilities. In Staten Island,
13 there was another corrugated plant where we'd pick up rolls of
14 paper and haul them back to Macungie. There was a place in
15 Dayton, New Jersey, that was a Pratt facility. And they're
16 more of a storage facility. We bring an abundant amount of
17 overflow boxes to that facility.

18 Q What was your seniority with respect to the other drivers?

19 A I, well, when I was initially hired, I was the Number 2
20 driver. Then early December of 2011, the Number 1 driver was
21 let go, making me the most senior driver.

22 Q Did you ever talk to anyone in management about the number
23 of drivers that the Employer planned to hire?

24 A Yes.

25 Q Who did you talk to?

1 A Phaedra Powell.

2 Q And when did you talk to Phaedra Powell?

3 A It was just in conversation in the office. It was brought
4 up a couple of times. I really couldn't tell you a date, an
5 actual date.

6 Q Can you tell us what she told you about the number of
7 drivers?

8 A The number of drivers was to be 20, according to the
9 workload. If it got busier, which they had planned it to get
10 busier, they would expand even more.

11 Q Did she ever talk about laying off the drivers?

12 A No.

13 Q Did she ever talk to you about hiring more third-party
14 carriers?

15 A No.

16 Q Did you have any accidents when you worked for Pratt
17 Corrugated?

18 A Yes, I did.

19 Q When was the accident?

20 A I was involved in a motor vehicle accident on December 29,
21 2011.

22 Q Was that the only accident you were involved in?

23 A Yes.

24 Q Would you tell us what happened?

25 A I had picked up a load of paper from Lansdale, Lansdale,

1 Pennsylvania, and while traveling back to the Pratt facility in
2 Macungie, I overturned the truck on the exit ramp from 476
3 leading onto 22 West.

4 Q Did the police come to the scene?

5 A Yes, they did.

6 Q Did anyone from management come to the scene?

7 A Yes, they did.

8 Q Who came out?

9 A Phaedra Powell came and met me.

10 Q Did you take photographs of the truck at the scene of the
11 accident?

12 A Yes, I did.

13 JUDGE GIANNASI: Now how is this relevant, Ms. Brown?

14 MS. BROWN: Well, this is the accident that they say he
15 was discharged for. So I'm putting in -- he followed
16 appropriate procedures at the time of the accident and I just
17 wanted to put in what happened.

18 **(General Counsel Exhibit 4 marked for identification.)**

19 BY MS. BROWN:

20 Q I'm showing you what's been marked as General Counsel's
21 Exhibit 4. Could you take a look at that, please. Are those
22 the photographs that you took at the time of the accident?

23 A Yes, they are.

24 Q Did you receive -- did you get a ticket or a citation?

25 A Yes, I did.

1 **(General Counsel Exhibit 5 marked for identification.)**

2 BY MS. BROWN:

3 Q I'm showing you what's been marked as General Counsel's
4 Exhibit 5. Would you take a look at that, please. Is that the
5 ticket or citation that you received in connection with the
6 accident?

7 A Yes, it was.

8 Q How did you pay the ticket? Who paid it?

9 A Pratt did. I have a com data card that Pratt provided
10 funds on the card for me to pay this online --

11 **(General Counsel Exhibit 6 marked for identification.)**

12 BY MS. BROWN:

13 Q I'm showing you a copy of what's been marked as General
14 Counsel's Exhibit 6. Take a look at that, please. Can you
15 tell us what that is?

16 A This is the receipt of payment for the citation.

17 JUDGE GIANNASI: Is there any doubt that the company
18 reimbursed you for this? I mean is that the company credit
19 card?

20 THE WITNESS: That's the company credit card.

21 JUDGE GIANNASI: How do I know that?

22 MS. BROWN: I'm about to show you.

23 JUDGE GIANNASI: Maybe you'll stipulate to that.

24 MR. STUART: I haven't seen this before.

25 **(General Counsel Exhibit 7 marked for identification.)**

1 BY MS. BROWN:

2 Q I'm showing you what's been marked as General Counsel's
3 Exhibit 7. Can you tell us what that is?

4 A That is a com data card that was provided to me upon my
5 employment with Pratt.

6 Q And is that the card that you used to pay the ticket?

7 A Yes, it is.

8 Q And you said Pratt loaded the money onto the card?

9 A Yes, they did.

10 MS. BROWN: I would like to offer General Counsel's
11 Exhibits 4 through 7 into evidence.

12 JUDGE GIANNASI: Any objection?

13 MR. STUART: I don't have any problem with 4, of course.
14 It's a picture of the accident. I don't know what 5, 6, and 7
15 have to do with this case, so I would object on the basis of
16 relevance.

17 MS. BROWN: Well, it is relevant, once, he said he
18 received a citation and the citation wasn't for excessive
19 speed, which is what the Employer allegedly, what they told him
20 they were firing him for on April 27th. Number two, it shows
21 that he was given a card that shows the name Pratt Industries,
22 not Pratt Corrugated Logistics. And it matches up with the
23 receipt that the Employer paid it. They didn't make him pay
24 for his own ticket. I believe there is something in the
25 handbook about who is responsible for tickets and when. So it

1 is relevant that the Employer paid for the ticket and did not
2 require Mr. Salazar to pay it, himself.

3 MR. STUART: All right. Your Honor, we'll withdraw the
4 objection.

5 JUDGE GIANNASI: Received.

6 **(General Counsel Exhibits 4 through 7 received into evidence.)**

7 BY MS. BROWN:

8 Q Were you injured in the accident?

9 A Yes, I was.

10 Q Describe your injuries.

11 A It was described to me that I had a contusion in my knee
12 and a small tear in my rotator cup.

13 Q Did you miss any time at work?

14 A I missed one day.

15 Q So you went back. When did you go back?

16 A That would have been the 31st of December.

17 Q 31st, okay. Were you on light duty?

18 A Yes, I was.

19 Q And what kind of work did you do while you were on light
20 duty?

21 A Typically paperwork, filing, copies, greeting other
22 outside companies for deliveries. Pretty much, that's the
23 nature of the work.

24 Q Now you testified that in addition to driving that you
25 also did dispatching.

1 A That's correct.

2 Q When did you perform dispatcher's duties?

3 A I would say probably about two weeks after my return I
4 went into dispatch. They had recently released the girl that
5 was the dispatcher. They released her and there was talk of
6 Corrugated Logistics going as a 24/7 operation, so they would
7 have needed a nighttime dispatcher, where I addressed to
8 Phaedra my interest in maybe taking the dispatcher role.

9 Q And how long did you perform dispatcher's duties?

10 A It was about two weeks that I, that I started the
11 dispatcher role where I approximately went into March, maybe
12 early April, dispatching.

13 Q Now you said there was an opening for dispatcher coming
14 up. Were you offered the position?

15 A Yes, I was.

16 Q Okay. And who offered you the position?

17 A Phaedra Powell.

18 JUDGE GIANNASI: When was that?

19 THE WITNESS: That would have been in late February.

20 BY MS. BROWN:

21 Q And did you accept the position?

22 A No, I did not.

23 Q So did you go back to driving?

24 A Eventually, they did put me back to driving. When they
25 found a dispatcher, I then went back to driving, yes.

1 JUDGE GIANNASI: Why did you turn down the dispatcher job?

2 THE WITNESS: Well, they would never actually start
3 talking about how much I would be getting paid. Also, there
4 was a lot being said in the office. You know a driver receives
5 his work and there was a lot of talk about this driver or, you
6 know, not a specific driver but the drivers when they left. I
7 believe if something is to be said, it should be said to his
8 face or whatever.

9 JUDGE GIANNASI: Well, you testified that somebody made
10 you an offer.

11 THE WITNESS: Right.

12 JUDGE GIANNASI: And this was in a conversation. Was this
13 a face to face conversation sometime in February?

14 THE WITNESS: Yes.

15 JUDGE GIANNASI: And what did you respond?

16 THE WITNESS: No, I wasn't interested.

17 JUDGE GIANNASI: Did you elaborate on why you weren't
18 interested?

19 THE WITNESS: Yeah, because they would not talk about how
20 much I'd be getting paid. Nobody seemed to want to talk about
21 how much --

22 JUDGE GIANNASI: I'm interested in the conversation you
23 had with Phaedra. Phaedra, in February, in a face to face
24 conversation, offered you the job of dispatcher. Was that
25 night dispatcher or day dispatcher?

1 THE WITNESS: It was just all as dispatcher. They never
2 actually went forward with the 24/7 operation, so it was I
3 would sit outside her office as the dispatcher, as she was
4 doing her managerial.

5 JUDGE GIANNASI: So she offered you the job and you said
6 no?

7 THE WITNESS: Right, I did not want the dispatcher job.

8 JUDGE GIANNASI: Go ahead.

9 BY MS. BROWN:

10 Q Were you disciplined for the accident?

11 A I got a written warning that I did disagree with.

12 Q Okay. And who gave you the warning?

13 A Phaedra.

14 **(General Counsel Exhibit 8 marked for identification.)**

15 BY MS. BROWN:

16 Q I'm showing you what's been marked as General Counsel's
17 Exhibit 8. Can you tell us what that is?

18 A This is the written warning that I received.

19 Q And did you receive it on the day you signed it?

20 A Yes, I did.

21 MS. BROWN: I'd like to offer General Counsel's Exhibit 8
22 in to evidence.

23 MR. STUART: May I voir dire the witness, Your Honor?

24 JUDGE GIANNASI: Yes.

25 MR. STUART: Thank you.

VOIR DIRE EXAMINATION

2 BY MR. STUART:

3 Q Mr. Salazar, looking at General Counsel 8, please, the
4 middle of the document, facts of incident, do you see that?

5 A I'm sorry, where?

6 Q The middle of the document, the middle of the page.

7 A Okay.

8 Q There is a heading on the left-hand side, facts of the
9 incident.

10 A Right.

11 Q And then there is one, two, three, four, five handwritten
12 lines.

13 A That's correct.

14 Q Is that your handwriting?

15 A Yes, it is.

16 Q And under additional remarks, there is more handwriting,
17 two lines. Is that also your handwriting?

18 A That's correct.

19 MR. STUART: Okay, thank you, Your Honor. I don't have
20 any further voir dire.

21 JUDGE GIANNASI: Well, how did this come about? I mean
22 they asked you to write your own warning? I don't understand
23 how this came about.

24 THE WITNESS: Yeah, pretty much.

25 JUDGE GIANNASI: Who wrote Christian Salazar up on top?

1 THE WITNESS: That's me, yep.

2 JUDGE GIANNASI: This is strange.

3 THE WITNESS: The only thing --

4 JUDGE GIANNASI: in other words, what was the
5 conversation. Did they hand you a blank document?

6 THE WITNESS: Yes, they did.

7 JUDGE GIANNASI: And who handed you that document?

8 THE WITNESS: Phaedra Powell.

9 JUDGE GIANNASI: Did she have a signature on it before she
10 handed it to you or was it blank?

11 THE WITNESS: No, she signed it right in front of me. She
12 told me what to write. She signed it. I signed it. And then
13 I made my own comments. She said I could make my own comment
14 at the bottom. That's when I added my comment.

15 JUDGE GIANNASI: She told you to write the facts of the
16 incident?

17 THE WITNESS: Yep.

18 JUDGE GIANNASI: And so you wrote -- those are your words?

19 THE WITNESS: She told me what to write.

20 JUDGE GIANNASI: Oh, she told you what to write. Okay.
21 I'll receive it into evidence.

22 **(General Counsel Exhibit 8 received into evidence.)**

23 **CONTINUED DIRECT EXAMINATION**

24 BY MS. BROWN:

25 Q Now, Mr. Salazar, when you were working as a dispatcher,

1 you said you were sitting, you sat outside of Phaedra Powell's
2 office?

3 A That's correct.

4 Q Would you describe the area, who worked there, what
5 offices were there?

6 A Phaedra had an office -- there was two offices on the back
7 wall. It was Phaedra's office, which is the logistics manager,
8 and there was an office next to it which was the shipping and
9 receiving manager.

10 Q Who was that?

11 A Excuse me?

12 Q Who was that?

13 A His name was Greg. I don't remember his last name.

14 Before I was let go, he was let go. Outside the office, I sat
15 outside the logistics office, I'm sorry, the logistics
16 manager's office, Phaedra. And across from me was a desk
17 shared by the nighttime and daytime shipping and receiving
18 supervisors.

19 Q Okay. And who were they?

20 A Well, they alternated, so it was Joseph Huffnagel and
21 Francisco Ortiz. And then there was off to the right of them
22 was the delivery schedule person. I really don't know his
23 title, but he was in charge of setting the schedule for
24 delivery.

25 Q When you performed the dispatching duties, did you work

1 with Francisco Ortiz?

2 A Yes, I did.

3 Q And describe your interaction with him.

4 A Well, Francisco Ortiz would tell me the priority -- if he
5 handed me five loads, five bills of lading, he would tell me
6 which one would take priority, which one has to go first
7 according to the schedule. Justin Kutcher (ph.) was the
8 schedule person. He would hand me and tell me what loads were
9 priority according to Justin's schedule. I then would lay them
10 on my desk in priority order. And as the drivers came in, I
11 would hand them out as such.

12 Q So did you communicate with him -- when you were
13 dispatching, did you work with him daily?

14 A Yes.

15 Q When you were working as a dispatcher, were you assigned
16 an email or given an email?

17 A Yes, I was.

18 Q And what was your email address?

19 A Csalazar, C, the first initial of my first name, Salazar,
20 my last name, @PrattIndustries.com.

21 Q Now when did you go back to driving after the accident?

22 A That was in April of 2000.

23 Q After you received the warning or filled out the warning
24 with Phaedra Powell, did you hear anything else about the --

25 A It was never brought up again.

1 Q About the December 29 accident.

2 A I'm sorry. It was never brought up again.

3 Q While you were working for Pratt Corrugated, did you know
4 that Teamsters Local 773 was trying to organize the drivers?

5 A No, I did not.

6 Q At some point, did you learn that they wanted to organize
7 the drivers?

8 A Yes, I did.

9 Q Okay. And how were you involved?

10 MR. STUART: Objection.

11 BY MS. BROWN:

12 Q Were you involved at all?

13 A No, well, yes. I ran into Darren. He was standing out in
14 the cul-de-sac at the stop sign.

15 Q Okay. And when was that?

16 A I was leaving on the morning of April 19th. I was leaving
17 for -- what it was, I was leaving for a load, but I also had a
18 temporary truck. My truck was at Lehigh Street getting
19 maintenance done. So first I had to go from Pratt to Penske to
20 pick up my truck. And on the way out there is when I ran into
21 Darren.

22 Q And did you stop and talk to him?

23 A Briefly. He handed me a leaflet and we said a couple of
24 words to each other. Then I drove off considering the matter
25 at hand. When I got to Penske, I had called Darren to get more

1 detail and conversation. He explained to me --

2 MR. STUART: Your Honor, I'm going to just object again to
3 the hearsay.

4 JUDGE GIANNASI: No, no, I haven't heard any hearsay. I
5 don't make findings based on unreliable hearsay. Overruled.

6 BY MS. BROWN:

7 Q So did you -- you called Darren? You called Darren?

8 A Yes, I did.

9 Q Okay. And did you contact any of your co-workers?

10 A Yes, I did. I contacted 9 out of 10 other drivers.

11 Q And when did you start calling those drivers?

12 A Pretty much after I got off the phone with Darren, I left
13 Penske. I went directly to my first delivery point and started
14 making my phone calls.

15 Q And what was the result of your calls?

16 A It actually wound up becoming pretty positive. Everybody
17 was, well, not everybody, but the majority of the people were
18 for organizing.

19 MR. STUART: Objection.

20 JUDGE GIANNASI: Overruled.

21 BY MS. BROWN:

22 Q Okay. You said that the majority of people were in favor
23 of organizing. Was there anyone that you talked to who was
24 opposed to it?

25 A Yes, there were two people.

1 Q And who were those two people?

2 A One was a driver, Steve West. And the other one was a
3 driver that I did not call, but when I was on the phone with
4 Darren at Penske, he was standing right next to me. So,
5 obviously, I did not need to call him. His name was Brian --

6 Q Fritzinger?

7 A Fritzinger, yes. I'm sorry.

8 Q Now you said you called the employees and talked to Steve
9 West. Was that the first conversation you had with Mr. West
10 about a union?

11 A No. You know in the time that I was working at Pratt
12 we've had short conversations just, you know, I guess it was
13 just conversation about union, Teamsters, how he felt, how I
14 felt.

15 Q Okay. Did you go to work on April 20th?

16 A Yes, I did.

17 Q And what if anything unusual happened?

18 A Well, in the morning, it was business as usual. It was
19 nothing out of the ordinary. I received my load, inspection,
20 went out, made my deliveries, called into the office regularly,
21 let them know where I was and if I was detained in any kind of
22 way or whatever. I was in full contact with the office as
23 required. It wasn't until my arrival at night, which was about
24 9:30 at night when I saw -- usually, it's an empty yard, well,
25 not an empty yard but empty area where we, you know, where the

1 managers part it's usually empty area, where when I pulled in
2 it was quite a few cars there. It is then when I realized that
3 I felt like I was going to be sandbagged.

4 Q Whose cars were there?

5 MR. STUART: Objection to that characterization.

6 JUDGE GIANNASI: That was his testimony.

7 BY MS. BROWN:

8 Q Whose cars were there?

9 A It was Erin.

10 Q Erin?

11 A Phaedra Powell.

12 Q Erin who?

13 A I'm sorry, Erin Cutler.

14 Q Okay. Who is she?

15 A She is the human resources manager, I guess.

16 Q Okay, Erin Cutler.

17 A Erin Cutler. Phaedra Powell, which is my boss. Paul
18 Zallas (ph.), which is warehouse manager, I guess. He's pretty
19 big on the corporate ladder.

20 Q And were those people normally there at that time, at
21 9:30?

22 A No, no.

23 Q Do you know what time Phaedra Powell normally left?

24 A 5:00. 5:01 hits, it's a ghost town.

25 Q Okay. What about Erin Cutler?

1 A The same.

2 Q And Mr. Zallas?

3 A He was either there during the day or he was there at
4 night. But if you saw him during the day, you can guarantee he
5 wasn't there at night. But I did see him during the day. It
6 was a shock that his truck was parked where it was at 9:30 at
7 night.

8 Q And what happened?

9 A Well, I pulled into the yard. I saw this. I contacted
10 Francisco Ortiz, as you normally do when you pull into the
11 yard, to find out if any doors needed an empty trailer.

12 JUDGE GIANNASI: Mr. Ortiz there?

13 THE WITNESS: Excuse me?

14 JUDGE GIANNASI: Is Ortiz present or did you call him on
15 the phone?

16 THE WITNESS: I usually called him on the phone. It was
17 just a lot easier.

18 JUDGE GIANNASI: On this occasion, did you call him on the
19 phone?

20 THE WITNESS: Yes, I did. He did not answer the phone.
21 And so I just put the trailer into the yard, not at a door.

22 BY MS. BROWN:

23 Q And so he would normally tell you where to put it, the
24 trailer?

25 A That's correct. And normally when he doesn't answer his

1 phone, it's because he's in the warehouse. You're not allowed
2 to be on the warehouse floor on a cell phone. It was a safety
3 issue. So when he doesn't answer his phone and he's in the
4 warehouse, he's obviously loading a trailer. Which then tells
5 me they don't need a trailer in the door. If he's at his desk,
6 he's normally waiting for an empty trailer, which he would --

7 JUDGE GIANNASI: Well, would he be there at 9:30 at night?

8 THE WITNESS: Yes. Yes. At this particular time, he was
9 on the night shift.

10 BY MS. BROWN:

11 Q Okay. So what happened?

12 A So I put the trailer in the yard. Then I pulled up to
13 where we park our trucks, which is right outside the logistics
14 door, and I started doing my post trip inspection while closing
15 out all my paperwork and everything else. When I pulled up,
16 there was nobody outside. But as I started doing my paperwork
17 and I opened the door, I turned around and Phaedra was there.
18 And that kind of startled me, because she wasn't there when I
19 pulled up. But that's when she said we need to talk to you,
20 have a seat in my office. And right there just it confirmed my
21 suspicions of --

22 JUDGE GIANNASI: Just say what happened. What did she
23 say, what did --

24 THE WITNESS: I went into the office and was greeted by
25 Paul Zallas, Erin Cutler, and Phaedra Powell walked in behind

1 me. They proceeded to tell me that I was being let go. When I
2 asked why, they told me --

3 BY MS. BROWN:

4 Q Who did the talking?

5 A For the most part, it was Phaedra and Erin. Paul Zallas
6 was there in the office with myself and Erin and Phaedra for
7 about 30 seconds. And then he walked outside and just waited
8 outside. So the conversation actually took place between the
9 three of us, Phaedra, Erin, and myself, where Phaedra proceeded
10 to tell me that they were letting me go. When I asked why,
11 Erin had told me after an extensive investigation that I was
12 found in the wrong of that accident. When I mentioned that was
13 four months earlier and everything else like that, and they
14 said, well, it's really not our doing, you know, it's
15 corporate. As she was talking to me, she kept looking down at
16 her --

17 JUDGE GIANNASI: Who is this? Who is she?

18 THE WITNESS: Phaedra, I'm sorry. When Phaedra was
19 talking to me, she kept looking down at her laptop, which was
20 in front of her, saying I was driving at an excessive speed and
21 they can't have that. She mentioned how much damage was done
22 to a truck. And so I asked her for a printed letter, a printed
23 report of this report because she would not turn her laptop
24 around and actually show me. She said she couldn't do that,
25 that I was to call corporate for a copy of those reports.

1 BY MS. BROWN:

2 Q Okay. And do you know what she meant, what was corporate?

3 A Corporate is Pratt headquarters in Conyers, Georgia.

4 Q And how did the meeting end?

5 A I told them to enjoy the rest of their night and take
6 care.

7 Q When you were working as a driver at Pratt, were there
8 ever times that work was slow?

9 A Yeah. It was a rarity, but yes, it did happen, yes.

10 Q Okay. About how many times?

11 A Me, myself, on a slow day went home anywhere from six to
12 eight hours. Eight hours, that's being a full day. But did
13 you ever just work eight hours, no.

14 Q Okay. So on how many occasions were you sent home
15 after --

16 A Maybe twice, twice. Like I said, I always worked anywhere
17 from 12 to 14 hours.

18 Q After you were discharged, well, when you were discharged,
19 was there -- do you know if there was a hiring sign out front?

20 A Yes, there was. There was always a hiring sign out front.

21 **(General Counsel Exhibit 9 marked for identification.)**

22 BY MS. BROWN:

23 Q I'm showing you what's been marked as General Counsel's
24 Exhibit 9. Can you take a look at that, please. Is that the
25 sign that was at the facility at the time of your discharge?

1 A Yes, it was.

2 Q And where was that sign?

3 A That sign was posted hanging off a gazebo. The gazebo is
4 actually right outside the logistics door.

5 MS. BROWN: I'd like to offer General Counsel's Exhibit 9
6 in to evidence.

7 JUDGE GIANNASI: Any objection?

8 MR. STUART: No objection.

9 JUDGE GIANNASI: Received.

10 **(General Counsel Exhibit 9 received into evidence.)**

11 BY MS. BROWN:

12 Q Did you schedule union meetings?

13 A Yes, we did. Darren and myself were in constant contact,
14 as well as the drivers and myself. We scheduled our first
15 meeting for I believe it was the 23rd at McDonald's right up
16 the road.

17 Q And is that where the meeting was held?

18 A No, it was not. We needed to reschedule the meeting. I
19 got word from somebody --

20 MR. STUART: Objection.

21 JUDGE GIANNASI: Yeah, I'm not going to go into that.

22 THE WITNESS: We rescheduled and made it over at the
23 Starlight Diner further up the road.

24 BY MS. BROWN:

25 Q And do you know how many people attended, how many

1 co-workers attended the meeting?

2 A I believe it was like seven or eight.

3 Q Did that include Guillermo Mejia?

4 A Yes, it did.

5 Q Do you know if there are cameras in the yard at the
6 Macungie facility?

7 A Yes, there are.

8 Q Do you know how many or where they are located?

9 A There is one in the front. There is one in the back. I'm
10 not too sure if there is one on the side.

11 Q Now when you say one in the front and one in the back,
12 where -- what's in the front and what's in the back? Where do
13 you park? Where are the trucks kept, in the front, back?

14 MR. STUART: Objection. There's about 15 different
15 questions in there.

16 BY MS. BROWN:

17 Q I'm sorry. Can you tell us more about the location of the
18 cameras and what it covers?

19 A Okay. When you come in off the cul-de-sac, you come down
20 the road or driveway, whatever you want to really call it,
21 that's the front. It's you're facing the building broadside.
22 You would go to the left, well, maybe like a 10:00 position
23 from the entrance to go to the logistics part of the building.
24 You would make a right to go towards the back, well, towards
25 the side, make a left down the side, and make another left to

1 go around to the back. Everybody parks on the front side, when
2 you first come down that driveway. Everybody parks there. If
3 you're a warehouse worker or a driver, you park to your left.
4 If you work front office, you park down by the side of the
5 building.

6 Q Okay. And where are the trailers parked?

7 A Trailers are parked starting from the drive where you pull
8 in, on the same side as the driveway all the way down the front
9 side of the yard. Also around the backside of the side, but on
10 the opposite side of the building.

11 JUDGE GIANNASI: I take it this is going to be connected
12 up with something.

13 MS. BROWN: Yes, Your Honor. Not in a moment, but it
14 relates to something.

15 BY MS. BROWN:

16 Q Do you know if the Employer -- at the time of your
17 discharge, do you know if the Employer had plans to hire other
18 drivers?

19 A Yes, they did.

20 Q How do you know?

21 A While I was in dispatch, it was already established that
22 on top of Tyler Donnelly and Brian Fritzinger, who came from
23 NFI --

24 Q What's NFI?

25 A NFI was the trucking company that they were using before

1 they actually hired us. They had -- NFI sent three regular
2 drivers that Pratt hired out from under NFI, the reason
3 being --

4 Q And who were they?

5 A Tyler Donnelly, Brian Fritzinger, and Mark --

6 Q Neely?

7 A Neely, Mark Neely.

8 Q Okay. So you said you know the Employer hired them. Do
9 you know if they planned to hire other people or --

10 A Yes.

11 Q -- if they were all hired?

12 A Yes, they were hired. And we have a driver, Abel Camilo,
13 whose friend had already taken his road test, his urine, all
14 the particulars to start employment. If I remember correctly,
15 there was just a small issue with his license that he had to
16 clear up. And when I was let go, he was scheduled to start. I
17 was let go on a Friday. He was scheduled to start I believe a
18 week from that following Monday.

19 JUDGE GIANNASI: How do you know that?

20 THE WITNESS: On top of driving, I was still in the office
21 helping out the new dispatcher. The new dispatcher was Chris.
22 His name is Christian, as well. In times where I would be
23 called into the office just to give him a hand, you would hear
24 everybody talking. And I also talked to Abel, who was friend
25 was --

1 JUDGE GIANNASI: Who is Abel?

2 THE WITNESS: Abel is another one of my peers. He was one
3 of the drivers. It's a buddy of his that was starting, that
4 was being hired.

5 MR. STUART: I respectfully move to strike. It's hearsay
6 and double hearsay, no foundation.

7 JUDGE GIANNASI: Well, we know. It is what it is.

8 MR. STUART: Okay. Is that you're overruling the
9 objection?

10 JUDGE GIANNASI: Yes, I am overruling the objection. You
11 can cross-examine. Obviously, I have to have more evidence
12 that -- if you're trying to show that somebody was being hired
13 at this time, you're going to have to show better evidence than
14 this.

15 MS. BROWN: We will, Your Honor. Thank you very much. I
16 have nothing further.

17 JUDGE GIANNASI: Cross?

18 MR. STUART: Yes, Your Honor. We'd like to request each
19 and every affidavit submitted by Mr. Salazar to the National
20 Labor Relations Board, Region 4, and an opportunity to review
21 that affidavit.

22 MS. BROWN: Give me a second.

23 MR. STUART: Perhaps this would be a good time for a lunch
24 break, Judge?

25 JUDGE GIANNASI: No, let's keep going.

1 MR. STUART: Give us some time to review and prepare for
2 the cross.

3 MS. BROWN: Okay. It's an eight-page affidavit. Can you
4 guys share? I may have another, let me just --

5 JUDGE GIANNASI: You may have another one?

6 MS. BROWN: I may.

7 MR. RODRIGUEZ: I could donate mine for the time being.

8 MS. BROWN: And I'm using one stack --

9 JUDGE GIANNASI: Oh, you only have one affidavit for this
10 individual.

11 MS. BROWN: Yes. I need the affidavits back for Mr. Fry.

12 MR. STUART: I marked it up.

13 MS. BROWN: Well, after -- you can give them all back,
14 give them back to me at the same time. I'd just like them
15 back. It doesn't matter.

16 JUDGE GIANNASI: All right, we'll have a 10 minute recess.
17 We'll go to lunch after this witness is finished.

18 MR. STUART: Thank you, Judge.

19 JUDGE GIANNASI: We are off the record for 10 minutes.

20 **(Whereupon, a brief recess was taken.)**

21 JUDGE GIANNASI: On the record.

22 **CROSS-EXAMINATION**

23 BY MR. STUART:

24 Q Mr. Salazar, I'm Eric Stuart. I represent Corrugated
25 Logistics, Pratt Corrugated Logistics. Corrugated Logistics is

1 the company that hired you in November 2011, is that correct?

2 A Yes.

3 Q Okay. And Corrugated Logistics was operating trucking
4 services in Macungie, Pennsylvania, at a facility, correct?

5 A Yes.

6 Q And that facility where Corrugated Logistics was operating
7 was a warehouse, correct?

8 A Yes.

9 Q And that warehouse was opened by what you understood to be
10 Pratt Industries, is that correct?

11 A Yes.

12 Q And in that warehouse operated by Pratt Industries, you
13 observed warehouse workers working, correct?

14 A Yes.

15 Q And the Corrugated Logistics drivers were not working in
16 the warehouse, correct?

17 A Yes.

18 Q Your direct supervisor was Phaedra Powell, as you say, the
19 logistics manager?

20 A Yes.

21 Q You were a driver for Corrugated Logistics. And you
22 operated a tractor. Correct?

23 A Yes.

24 Q And you are a CDL driver, is that correct?

25 A Yes.

1 Q You are a professional driver?

2 A Okay, yes.

3 Q Do you have any question that you are a professional CDL
4 driver?

5 A No, no question.

6 Q Okay, good. And I take it that you are familiar with the
7 motor carrier safety regulations governing professional drivers
8 such as yourself?

9 A Yes.

10 Q Okay, good. You operated a tractor and you were pulling a
11 trailer and that trailer was loaded with product, correct?

12 A Correct.

13 Q And the trailer that you were pulling with your tractor
14 was loaded by the warehouse workers, correct?

15 A By Pratt warehousemen, no.

16 Q The trailer that you operated was loaded at the facility
17 by warehouse workers, is that correct?

18 A Oh, yes. Yes.

19 JUDGE GIANNASI: Are we talking about the accident or just
20 generally?

21 MR. STUART: We're talking generally, Your Honor, now.

22 THE WITNESS: Oh, yeah. Yes. Okay.

23 BY MR. STUART:

24 Q Talking about the Macungie facility and your job, and what
25 you observed at that facility.

1 A Okay.

2 Q All of the Corrugated Logistics drivers reported to Ms.
3 Powell, correct?

4 A Yes.

5 Q And do you know who Ms. Powell reports to?

6 A Tom Olshefski.

7 Q And who is Tom Olshefski?

8 A He is regional manager, I guess. I really don't know his
9 title. He's Phaedra's boss.

10 Q And you know that he works for Corrugated Logistics?

11 A Yeah, far as I know, yeah.

12 Q Okay. Now just talking about the operations generally,
13 it's true that Corrugated Logistics has always used outside
14 carriers, isn't that right?

15 A Always used, no.

16 Q Corrugated Logistics has always used outside carriers such
17 as National Freight, Inc. Isn't that true?

18 A Before we were hired, yes.

19 Q I'm going to show you your affidavit that you submitted to
20 the National Labor Relations Board on, I'm sorry, the affidavit
21 was submitted -- signed on May 2, 2012. And I have a section
22 that I have -- may I approach?

23 JUDGE GIANNASI: Sure.

24 BY MR. STUART:

25 Q It's on Page 2. And I'll ask you to read that sentence

1 aloud starting with the employer. Just read it out into the
2 record.

3 A The employer always used an outside carrier, NFI, National
4 Freight, Inc.

5 Q Okay, thank you. Was that the affidavit that you provided
6 to the National Labor Relations Board?

7 JUDGE GIANNASI: Yes, it is.

8 THE WITNESS: Yes, it was.

9 JUDGE GIANNASI: Yes, you don't have to go into that. We
10 know it is his affidavit. You identified it.

11 BY MR. STUART:

12 Q Okay. And was the affidavit that you gave correct when
13 you gave it on May 2 to the Board?

14 A Yes.

15 Q To the best of your knowledge.

16 A Yes.

17 Q And you knew that the government would rely on it?

18 A Yes.

19 Q And you knew you were under oath when you gave it?

20 A Yes.

21 JUDGE GIANNASI: It doesn't matter.

22 MR. STUART: Okay, thank you.

23 JUDGE GIANNASI: You've got that in the record. You've
24 got it in the record. Move along.

25 MR. STUART: Thank you, Your Honor. I'll go as quickly as

1 I can.

2 BY MR. STUART:

3 Q Now as a professional CDL driver familiar with the motor
4 carrier safety regulations as you just testified --

5 A Yes.

6 Q I take it that you understand the requirement of doing a
7 pre-trip inspection of your vehicle and trailer?

8 A Yes.

9 Q And you know that if a vehicle or a trailer has a
10 mechanical problem or any problem that you have the right and
11 obligation not to drive that vehicle?

12 A Right.

13 Q And you know that -- strike that. It's your
14 responsibility to check the load --

15 A Yes.

16 Q -- before operating the vehicle?

17 A Yes.

18 Q And in checking the load, that consists of opening the
19 doors and visually inspecting it?

20 A Yes.

21 Q Now I want to direct your attention to the December 29
22 accident that you testified to. Your Honor, may I? You said
23 you took this picture, General Counsel 4?

24 A Yes.

25 Q With your own camera?

1 A Yes.

2 Q And that is an accurate representation of the accident
3 that occurred that day?

4 A Yes.

5 Q And the truck that you were operating in Pennsylvania.

6 A Yes.

7 Q You were concerned that day that you were going to lose
8 your job, isn't that right?

9 A Yes.

10 Q And you asked Phaedra Powell whether you were going to, in
11 fact, lose your job because of your rolling over that truck,
12 isn't that right?

13 A Yes.

14 Q And Ms. Powell told you that she didn't know, isn't that
15 true?

16 A That's correct.

17 Q And she told you that it wasn't up to her, isn't that
18 right?

19 A That's correct.

20 Q And, in fact, she told you that the decision would be made
21 not by her but by Tom Olshefski, isn't that right?

22 A Right.

23 Q Now you testified that there was a period of time that you
24 were on light duty. And during that time you weren't doing any
25 driving, isn't that right?

1 A Right.

2 Q And then sometime in January, some weeks later, you were
3 once again available to drive, correct?

4 A That's correct.

5 Q And before and while you were on light duty, Phaedra
6 Powell told you that she wanted you to sign a piece of paper
7 that said that you had been driving too fast on December 29,
8 correct?

9 A Right.

10 Q Sorry?

11 A Right.

12 Q So, at that point, she specifically advised you of an
13 initial decision that the company had made, as your supervisor,
14 that you had been driving too fast on December 29 and that
15 contributed to the roll over.

16 MS. BROWN: Objection, speculation as to the use of the
17 word initial.

18 JUDGE GIANNASI: Sustained. I mean that's argumentative.
19 You can make that argument in your briefs.

20 MR. STUART: Thank you.

21 BY MR. STUART:

22 Q In that conversation, you told Ms. Powell that you were
23 driving under the speed limit, correct?

24 A That's correct.

25 Q But yet Ms. Powell told you that the company had found

1 that you were driving too fast for conditions, correct?

2 A That's correct.

3 Q And ultimately she asked you to sign what's been
4 identified and admitted, Your Honor, may I, as General
5 Counsel's Exhibit 8, correct, which I am showing you now?

6 A That's correct.

7 Q This is the document that Ms. Powell -- is it correct that
8 this is the document, General Counsel Exhibit 8, that Ms.
9 Powell asked you to sign to evidence the fact that the company
10 believed that you had been driving too fast?

11 MS. BROWN: Objection. The document speaks for itself.

12 MR. STUART: No, it doesn't.

13 JUDGE GIANNASI: No, I'll permit that question.

14 BY MR. STUART:

15 Q You can answer.

16 A I'm sorry. Can you ask the question again?

17 Q Yes. When Ms. Powell told you that you had to sign a
18 document because you had been driving too fast for conditions,
19 and this is the document General Counsel 8 that she asked you
20 to sign, correct?

21 A Yes.

22 Q The third-party carriers that you discussed that the
23 company had used or was using, they were doing the same things
24 as the drivers, the direct-hired drivers, correct?

25 A Yes.

1 Q And when you say that you were delivering to customers,
2 you talked about that in your testimony, the customers that you
3 were delivering to, it's a fact that those were not all Pratt
4 related entities, isn't that right?

5 A Right, they weren't all Pratt.

6 Q So when you say they weren't all Pratt, what do you mean?

7 A There were customers ordering from Pratt; in other words,
8 they were ordering boxes to be made by Pratt.

9 Q Okay, thank you. Are you familiar with the term back
10 haul?

11 A Yes.

12 Q Could you tell us what it means?

13 A Back haul is once you are empty, the trailer is empty, you
14 would pick up another load to bring back to your facility or
15 around its area so you wouldn't deadhead back, deadhead being
16 driving empty.

17 Q Right. So, for example, you could be making a delivery to
18 a --

19 JUDGE GIANNASI: I understand what that means. I
20 understand what that means.

21 MR. STUART: Right, Your Honor. This is relevant to --

22 JUDGE GIANNASI: Yeah, but don't ask a hypothetical. Get
23 to the point.

24 MR. STUART: Okay.

25 JUDGE GIANNASI: You were preparing to ask a hypothetical

1 and you don't need to.

2 MR. STUART: Well, you read my mind very well, Your Honor,
3 but I'll go on.

4 JUDGE GIANNASI: Get to the point.

5 BY MR. STUART:

6 Q By the way, Mr. Salazar, just so the record is clear, when
7 you rolled that truck on December 29, the road was dry, is that
8 correct?

9 A Yes.

10 Q The visibility was clear?

11 A Yes.

12 Q You were driving -- you were operating equipment that you
13 were qualified to operate?

14 A Yes.

15 Q On a route that you were familiar with?

16 A Yes.

17 Q Okay, thanks. Now you testified that Ms. Powell told you
18 that any decision to end your employment was not up to her, it
19 was up to Tom Olshefski.

20 A That's correct.

21 Q It's true that Ms. Powell never told you that you were
22 being excused for the accident on December 29, isn't that
23 right?

24 A She never, I'm sorry?

25 Q I'll rephrase. It's true isn't it that Ms. Powell, your

1 supervisor, never told you that you were excused from the
2 accident, from what had occurred on December 29.

3 A When I filled out that report, she said this is what I'm
4 getting, I'm getting a written warning. So as far as saying
5 I'm excused, no, she never used those words, but she said all I
6 was getting was a written warning.

7 JUDGE GIANNASI: Again, this is argumentative. You're
8 trying to get him to make your argument. The argument is --
9 you're going to make the argument based on the facts.

10 MR. STUART: Okay, Thank you, Your Honor. I'll move on.

11 BY MR. STUART:

12 Q I'm going to show you again General Counsel's Exhibit 8.
13 I'm going to direct you to the section marked additional
14 remarks and ask you to take a look at that. You can hold it.
15 And that's your handwriting and you testified to that before.
16 And in there, when you wrote on the document, how fast did you
17 say that you were going?

18 A Approximately 10 miles an hour.

19 Q And when you provided your affidavit to the National Labor
20 Relations Board, you told them something different. You told
21 them that you were driving between 15 and 25 miles an hour,
22 correct?

23 A I don't remember.

24 Q Do you want to see your affidavit? That's fine. I
25 circled it for you. It's on Page 2.

1 A Okay.

2 Q So you told the Board you were going about 15 to 25?

3 A Right.

4 Q And you told the company that you were going under 10 when
5 they asked you about your version of the events, is that right?

6 A Yes.

7 Q So were you going about 15 or 20, like your affidavit to
8 the Board?

9 A It's possible.

10 Q After you received General Counsel's Exhibit 8, you didn't
11 hear from Mr. Olshefski directly with regards to the incident,
12 is that correct?

13 A To the accident, no.

14 Q In terms of the Macungie facility, it's true that the
15 building is shared with Coca-Cola?

16 A Yes.

17 Q So there are visitors and trucks and people coming in and
18 out that are associated with that company, correct?

19 A Yes.

20 Q And the Coca-Cola operations have nothing to do with the
21 Corrugated Logistics operations, correct?

22 A That's correct.

23 Q You testified that you spoke with Steven West.

24 A Right.

25 Q You said you had some conversations about unions, the

1 Teamsters, and things during your employment with Corrugated
2 Logistics.

3 A Right.

4 Q Those conversations were after hours and no one from
5 management was present at the facility, correct?

6 A Correct.

7 MR. STUART: I'm just about done, Your Honor. May I just
8 have a brief recess?

9 JUDGE GIANNASI: Well, we'll be off the record briefly.

10 **(Discussion off the record.)**

11 JUDGE GIANNASI: On the record. Is that it?

12 MR. STUART: Yeah, just one more question, Your Honor.

13 BY MR. STUART:

14 Q Mr. Salazar, you are not aware of any other Corrugated
15 Logistics drivers that rolled over their truck in the same spot
16 as you at any time during your employment?

17 A No.

18 Q Okay, thank you.

19 MR. STUART: Nothing further.

20 MS. BROWN: Just a couple of questions, Your Honor.

21 **REDIRECT EXAMINATION**

22 BY MS. BROWN:

23 Q Mr. Salazar, as the company hired more drivers, was there
24 any change in the amount of subcontractors, third-party
25 carriers that were used?

1 MR. STUART: Objection, Your Honor. The question is so
2 imprecise. It doesn't have a time, time frame, or anything
3 else.

4 JUDGE GIANNASI: Overruled. You both asked questions
5 about his knowledge of other subcontracting. I suppose the
6 best evidence would come from your witness. But, nevertheless,
7 you have both asked about his view of that and so this is
8 permissible.

9 MR. STUART: Thank you, Judge.

10 BY MS. BROWN:

11 Q The question?

12 A Okay. Well, at the beginning, we were using NFI. As
13 business went along, they hired the three NFI guys to do away
14 with the outside carriers, because the outside carriers were
15 costing them money.

16 JUDGE GIANNASI: You don't know why they did it. You just
17 know that they did it.

18 THE WITNESS: Yes.

19 JUDGE GIANNASI: Right?

20 THE WITNESS: Yes.

21 JUDGE GIANNASI: Just testify about what you now.

22 THE WITNESS: They hired the outside drivers on Pratt's
23 payroll.

24 BY MS. BROWN:

25 Q Now on December 29, did you do a pre-trip inspection or

1 did you check your load before you left?

2 A Yes, I did.

3 Q And what were you able to observe from your visual
4 inspection?

5 A When the load was finished being loaded onto the truck, I
6 pulled away from the dock so I could shut my doors. Upon
7 shutting my doors, I do a pre-trip inspection of my load. Like
8 I said, I was hauling giant rolls of paper, which these rolls
9 of paper, if you put two by two, two alongside each other, they
10 couldn't go alongside each other, so they all were overlap each
11 other. So, in essence, you could only see the two that are
12 right at the door. Those two rolls had rubber mats under them.
13 Apparently, when the truck rolled, there were only two mats on
14 the truck. We were never trained in hauling these rolls of
15 paper. So to the best of my knowledge that is the only way to
16 secure these loads is just those rubber mats from sliding in
17 the trailer.

18 Q Okay. And you said when you visually inspected you could
19 see two rubber mats in the front?

20 A Yes.

21 Q Were you able to tell if there were rubber mats underneath
22 anything else?

23 A You can't see past those first two rolls. And you are not
24 allowed on the loading dock as they are loading those rolls
25 because of the danger of these rolls breaking loose from a clam

1 truck.

2 Q When you had the accident coming off that exit ramp, what
3 was the speed limit on the ramp?

4 A Twenty-five.

5 MS. BROWN: Nothing further.

6 JUDGE GIANNASI: Very briefly, please.

7 MR. STUART: Yes, okay.

8 **RECROSS EXAMINATION**

9 BY MR. STUART:

10 Q With regards to the loading process, there is a place that
11 you can be to watch, to visualize that process as it goes on,
12 isn't that right?

13 A They usually chase you off the loading dock completely.

14 Q But in any event you are responsible for that load and how
15 it is loaded to be sure that it is safe, correct?

16 A That's correct.

17 JUDGE GIANNASI: All right, now this is recross.

18 MR. STUART: Yes. Nothing further.

19 JUDGE GIANNASI: Let me ask you this. After the accident,
20 you said that you were on light duty for a while and you did
21 some dispatching. When is it that you started driving again?

22 THE WITNESS: As I was dispatching, there had been certain
23 occasions where I had to jump in a truck and make a delivery,
24 myself. There was two times that I can recall in particular
25 where a load was supposed to go out. It wasn't ready all day.

1 It finally went out when the drivers were already being sent
2 home. And this --

3 JUDGE GIANNASI: So who made those assignments?

4 THE WITNESS: Phaedra.

5 JUDGE GIANNASI: Phaedra. And when did she make those
6 assignments?

7 THE WITNESS: When it was told that these loads had to
8 be --

9 JUDGE GIANNASI: No, I'm saying when, in January,
10 February?

11 THE WITNESS: The date? Oh, I'm sorry. Yeah, March.

12 JUDGE GIANNASI: March?

13 THE WITNESS: Yeah.

14 JUDGE GIANNASI: So you started driving again in March?

15 THE WITNESS: I started driving steadily in March again,
16 in March. But throughout February, there were instances, one,
17 two a week maybe, jump in a truck and just drive a load over
18 somewhere.

19 JUDGE GIANNASI: All right. So beginning in March, you
20 started driving again regularly?

21 THE WITNESS: Regularly, yes.

22 JUDGE GIANNASI: And who made those assignments?

23 THE WITNESS: Phaedra.

24 JUDGE GIANNASI: What part of March? Was it the beginning
25 of March, middle of March?

1 THE WITNESS: Mid-March.

2 JUDGE GIANNASI: Okay.

3 THE WITNESS: I know I could tell you it was mid-March
4 because Christian, the dispatcher that replaced me, was
5 supposed to start March 1st and could start because of an issue
6 at NFI, which is where he came from. So he had to take two
7 weeks before he could start from March 1st, so that was
8 mid-March when he started.

9 JUDGE GIANNASI: Okay. You're excused.

10 **(Witness excused.)**

11 JUDGE GIANNASI: All right, we'll take a recess now and
12 we'll come back at 1:40 promptly. It is now five minutes to
13 1:00. We will come back at 1:40 promptly.

14 **(Whereupon, at 12:45 p.m., a luncheon recess was taken.)**

15

1 A F T E R N O O N S E S S I O N

2 (Time Noted: 1:40 p.m.)

3 JUDGE GIANNASI: On the record.

4 Raise your right hand.

5 (Whereupon,

6 GUILLERMO MEJIA,

7 was called as a witness by and on behalf of the General Counsel
8 and, after having been duly sworn, was examined and testified
9 as follows:)

10 JUDGE GIANNASI: Be seated, please.

11 THE WITNESS: Thank you.

12 JUDGE GIANNASI: Give your name and address to the
13 reporter, and speak up.

14 THE WITNESS: Okay. My full name is Guillermo Mejia. I
15 spell the first name as G-U-I-L-L-E-R-M-O, Mejia, M-E-J-I-A.

16 DIRECT EXAMINATION

17 BY MR. RODRIGUEZ:

18 Q And, Mr. Mejia, who is your employer?

19 A Pratt Industries.

20 Q What position do you hold with the company?

21 A I was hired as a yard jockey.

22 Q Are you still a yard jockey?

23 A Yes, I am.

24 Q When were you first hired for that position?

25 A That was by the end of November 2011.

1 Q Between November 2011 and now, has there ever been a
2 period of time where you became separated from the Employer?

3 A Yes, sir. It was by April.

4 Q When was that?

5 A April 24, 2012.

6 Q Who was your supervisor?

7 A Phaedra Powell.

8 Q What is her title?

9 A She's the logistics manager.

10 Q Is Ms. Powell involved in hiring?

11 MR. STUART: Objection, speculation.

12 MR. RODRIGUEZ: Well, he's going to explain how he knows.

13 JUDGE GIANNASI: Is she an admitted supervisor?

14 MR. RODRIGUEZ: Your Honor, the --

15 MR. STUART: Yes.

16 MR. RODRIGUEZ: The Respondents admitted her title but did
17 not admit her agency and supervisory status under the Act.

18 JUDGE GIANNASI: Oh, I'm sure they will. Right?

19 MR. STUART: Yes.

20 MR. BALLYEAT: Yeah.

21 JUDGE GIANNASI: I'll accept that as a stipulation.

22 MR. STUART: Thank you, Your Honor.

23 BY MR. RODRIGUEZ:

24 Q Are you familiar with a person named Francisco Ortiz?

25 A Yes, I am.

- 1 Q What company does he work for?
- 2 A Pratt Industries.
- 3 Q What's his title?
- 4 A He's a second shift supervisor.
- 5 Q Is Mr. Ortiz your supervisor?
- 6 A Yes, I am -- yes, he is. I'm sorry.
- 7 Q How do you know?
- 8 A Because he'll still tell me what to do.
- 9 Q And when you say he used to tell you what to do, what
- 10 types of assignments did he give you?
- 11 A He gave me specific orders to move trailers, inspect
- 12 trailers, get some specific trailers to be parked in a
- 13 specific --
- 14 Q How frequently did he do that?
- 15 A Every day.
- 16 Q And do you have to do what he tells you to do?
- 17 A Yes, according to Phaedra Powell told him specifically do
- 18 exactly everything what he requests and everything went yes.
- 19 JUDGE GIANNASI: Did she tell you that, personally?
- 20 THE WITNESS: Yes. Personally, she told me that. It was
- 21 three of us. It was him, me, and Phaedra Powell.
- 22 BY MR. RODRIGUEZ:
- 23 Q While working at Pratt, did an employee ever talk to you
- 24 about joining a union?
- 25 A Yes.

- 1 Q When was the first time that happened?
- 2 A That was by April 19, 2011.
- 3 Q And what employee talked to you about the union?
- 4 A It was Chris Salazar.
- 5 Q What did he tell you?
- 6 A He told me if I was willing to go to a meeting Monday to
- 7 speak about the union.
- 8 Q Did he say when the meeting was supposed to take place?
- 9 A Yeah, it wasn't that specific, around those days, in a
- 10 fast food restaurant.
- 11 Q Do you remember what date the meeting was supposed to be?
- 12 A After April 19, the 20, 21, around those days.
- 13 Q And did the meeting actually take place?
- 14 A It took place in a different location.
- 15 Q Did you attend the meeting?
- 16 A Yes, I did.
- 17 Q How many other employees attended?
- 18 A It was several employees.
- 19 Q Can you give me a rough estimate?
- 20 A Seems to me more than 10 I think.
- 21 Q Do you recall signing anything at that meeting?
- 22 A Yes, I did, a small card, like signing my name and --
- 23 Q Do you know what the card was for?
- 24 A -- joining the union. It was for the union, being a
- 25 member of the union.

1 Q And did you take anything home with you from the meeting?

2 A Yes, I did. I took one card for another employee who
3 couldn't assist.

4 Q What type of card? The same card you signed?

5 A The same card that I signed. I give it to another
6 employee.

7 Q What did you do with that card you took home?

8 A I took it the next day and I give it to Mike Messina.

9 Q Do you remember what day you gave it to Mike Messina?

10 A I know it was after the meeting and I give it to him in
11 the yard when we were working.

12 Q At what time, do you recall?

13 A Between 10:00 in the morning and 11:00.

14 Q You mentioned in the beginning of your testimony that you
15 became separated from Pratt. When did that happen?

16 A April 24, 2012.

17 Q At what time?

18 A Exactly 6:45.

19 JUDGE GIANNASI: Morning or evening?

20 THE WITNESS: That was evening.

21 BY MR. RODRIGUEZ:

22 Q How did the company break the news to you?

23 A The call me to my personal cell phone.

24 Q Who called you to your personal cell phone?

25 A Eric -- Erin Cutler.

1 Q Okay.

2 A My understanding she is at human resources.

3 Q Go on.

4 A From there she called me to my personal cell phone and she
5 say please proceed yourself to the main office, they would like
6 to discuss something with you. And then after that I say,
7 okay, give me a minute and I will be there.

8 Q And did you go to the main office?

9 A Yes, I went to the main office.

10 Q And what happened when you got there?

11 A I went in and it was Phaedra Powell, it was Christian
12 West, I think that's his last name, and Erin, Erin Cutler.

13 Q How long did the meeting last?

14 A Very short, no more than five minutes. I think not even
15 more than three minutes.

16 Q Now I want you to describe to me in the best detail you
17 can everything that was said at the meeting and who said it.
18 How did the meeting start?

19 A Erin Cutler, she was the one who started. She said just
20 have a seat and I would like to mention to you that everyone in
21 this world, we make mistakes, and unfortunately it has been
22 happening a lot of things in this plant that we decided to.
23 Then after that, she stopped, and she make this gesture with
24 her hand to Phaedra Powell to start speaking up.

25 Then Phaedra Powell, she start speaking up and she say,

1 Guillermo, you're a great guy, you're a good guy. And then I
2 saw her, she was nodding face down. And it seems like it was
3 not making sense what she was doing. I was reading her body
4 language and she was like nodding. Then she put her hand like
5 this, which took like five seconds. And then she say I'm sorry
6 I have to let you go. And I say why. And I say because? And
7 then she repeated one more time. She said I'm sorry, you're a
8 great guy, and then she just suddenly changed everything. It
9 seems like she don't want to do something, but she seemed like
10 she was forced to do it.

11 Q What else did Powell say?

12 A She say you had start having bad performance. She start
13 saying that I am not obeying what she say. She started saying
14 that I start parking bad trailers on the docks. She started
15 mention that the yard sheet, it was not properly done.

16 JUDGE GIANNASI: The yard what, was not?

17 THE WITNESS: They call it yard sheet. It's when you
18 start inspecting every single trailer, if it is loaded,
19 rejected.

20 JUDGE GIANNASI: The yard sheet?

21 THE WITNESS: Yeah, that's what they called it, yeah, the
22 yard sheet.

23 JUDGE GIANNASI: Are you getting this?

24 BY MR. RODRIGUEZ:

25 Q Go on.

1 A And then after that she let me know those things. And I
2 say I'm doing the best that I can and if I recall, I asked you
3 two weeks ago how do you like how I work, and you say that I
4 was working great; even, you mentioned exactly, with the
5 specific words, that I was working like a horse.

6 Q You said that during the meeting?

7 A Did she say that.

8 Q And had you previously had that conversation?

9 A And I recall it to her. And she say, no, that's not true,
10 I never say that.

11 Q And when did you have that conversation with her about
12 your work performance?

13 A Was two weeks before I get fired.

14 Q And what did she say?

15 A And then that specific day in April 24th, she say, no, I
16 never say that. And I say, yes, you did. And then she say,
17 oh, I don't know what you're talking about, but she never
18 looked me straight to the eyes.

19 Q Okay. Other than the specific -- did anybody bring up any
20 specific incidents or problems that they had with you?

21 A Again, it was the dispatch, Chris West. I noticed that
22 Phaedra Powell, she just bump it. And then he start talking.
23 And then he say --

24 JUDGE GIANNASI: Was this at the April 24th meeting?

25 THE WITNESS: That was everything, the April 24th meeting.

1 And then he say, he say, yeah, I also find out that you're not
2 responding your radio, meaning the walkie-talkie, because
3 that's the way we communicate. You not responding your
4 walkie-talking, you taking so long to take those calls. He
5 mentioned my bad performance. And I said I mean you also told
6 me that I was a great guy, it doesn't make no sense, why you
7 keep on tell me these things. And she say, no, I never say it.
8 I say, yes, you did.

9 Q Now this is your conversation with Chris?

10 A With Chris right there between three of us.

11 Q Now did he mention like a specific situation, a specific
12 event other than just generally not answering calls, anything,
13 a specific like something, this happened on X day, for example.
14 Did they bring up a specific event?

15 A No.

16 MR. STUART: Objection. Leading.

17 JUDGE GIANNASI: Overruled. The answer is no?

18 THE WITNESS: No.

19 BY MR. RODRIGUEZ:

20 Q What else was said during that conversation?

21 A Then after that, Erin Cutler, she mention, she say you're
22 a great guy, just give me the keys to the truck, give me the
23 walkie-talkie, and please step out.

24 Q Okay.

25 JUDGE GIANNASI: When did you start working?

1 THE WITNESS: I know it was by the end of November. It
2 was the last days of November 2010.

3 BY MR. RODRIGUEZ:

4 Q Did anybody say during that meeting anything about unsafe
5 or damaged trailers?

6 A No, they didn't mention at all.

7 JUDGE GIANNASI: You said November 2010. Do you mean
8 2011?

9 THE WITNESS: I'm sorry, 2011, yeah, because the last, I'm
10 sorry, yes. Yeah, 2011.

11 BY MR. RODRIGUEZ:

12 Q Did anybody hand you any documentation during this
13 meeting?

14 A No, nothing. They didn't give me no, to sign anything,
15 no.

16 Q Did anybody ask you to sign anything during the meeting?

17 A No, not at all.

18 Q Did you receive a written warning for any incidents during
19 that meeting?

20 A No, nothing.

21 Q Did you ever get written up before you were fired on
22 April 24th?

23 A Yes.

24 Q How many times?

25 A Two times only.

1 **(General Counsel Exhibit 10 marked for identification.)**

2 Q I'm showing you what's been marked as General Counsel's
3 Exhibit 10. Can you tell me what that is?

4 A Yeah, it was a trailer.

5 Q Can you tell me what that document is that I handed you?

6 A Oh, yes. Actually, when she give me this paper, she just
7 told me don't worry, it's just going to be consultation. But I
8 just noticed right now the box is checked --

9 Q You don't have to read the document. Just tell me what
10 the document is.

11 A Yeah, it's a consultation. That's what she told me --

12 Q Okay. And when she -- when did Phaedra give you this
13 document?

14 A That was the day that I damaged one of the trailers.

15 Q Do you remember what date that was?

16 JUDGE GIANNASI: Well, it's the date that's on here.

17 THE WITNESS: Yes.

18 JUDGE GIANNASI: It says March 30th.

19 THE WITNESS: It was in March 30.

20 BY MR. RODRIGUEZ:

21 Q Okay. And what did she say, when she gave you that?

22 A She just told me not to worry about it, it was just
23 consultation.

24 Q Okay.

25 JUDGE GIANNASI: Was this all filled out when it was given

1 to you?

2 THE WITNESS: Yes.

3 JUDGE GIANNASI: And is that, where it says employee's
4 comments, is that your signature?

5 THE WITNESS: Yes, it is.

6 JUDGE GIANNASI: That's an interesting signature.

7 **(General Counsel Exhibit 11 marked for identification.)**

8 BY MR. RODRIGUEZ:

9 Q Now I've handed you what's been marked as General
10 Counsel's Exhibit 11. Can you tell me what that is?

11 A Yeah, she also told me that was --

12 Q Just tell me what the document is.

13 A It was the same thing, the same word that she used. She
14 was --

15 Q What is the document that I showed you? What is that
16 piece of paper you are holding?

17 JUDGE GIANNASI: Well, whatever it is, it was given to
18 you --

19 THE WITNESS: It's counseling.

20 JUDGE GIANNASI: This was given to you on the date
21 indicated, 4/4/12?

22 THE WITNESS: Yeah, 4/4/12, counseling. That's what she
23 told me.

24 BY MR. RODRIGUEZ:

25 Q And who gave that to you?

1 A Phaedra Powell.

2 Q And what did she tell you why she gave that to you?

3 A She told me exactly the same words, you are not going to
4 get in trouble, it's just, please, not spread information
5 according to her toward employees.

6 JUDGE GIANNASI: Was this all filled out when it was given
7 to you?

8 THE WITNESS: Yes.

9 JUDGE GIANNASI: And is that your signature where it says
10 signature of employee?

11 THE WITNESS: This is, no, it doesn't have my signature --
12 yeah, I just saw it, yeah.

13 JUDGE GIANNASI: All right.

14 MR. RODRIGUEZ: Your Honor, I'd like to offer General
15 Counsel's Exhibit 10 and 11 into evidence.

16 MR. STUART: No objection, Your Honor.

17 JUDGE GIANNASI: Received.

18 **(General Counsel Exhibits 10 and 11 received into evidence.)**

19 BY MR. RODRIGUEZ:

20 Q Now before you were fired on April 24th, had you ever been
21 suspended?

22 A No, never.

23 Q Had you ever been -- were you ever warned that your job
24 was in danger?

25 A No, never.

1 Q Did you have any reason to think that you were about to
2 get fired?

3 MR. STUART: Objection, speculation. Did he have any
4 reason to know.

5 JUDGE GIANNASI: Yes. I will sustain that objection. I
6 also note that the document says, it's got a checkmark next to
7 the notation that says discipline up to and including
8 discharge.

9 **(General Counsel Exhibit 12 marked for identification.)**

10 BY MR. RODRIGUEZ:

11 Q I'm showing you what's been marked as General Counsel's
12 Exhibit 12. Was that ever given to you by the company?

13 A Never.

14 **(General Counsel Exhibit 13 marked for identification.)**

15 BY MR. RODRIGUEZ:

16 Q And now I've handed you what's been marked as General
17 Counsel's Exhibit 13. Was that ever given to you by anybody in
18 the company?

19 A Never.

20 Q And going back for a second to the meeting on April 24th
21 when you were discharged, do you recall anything about anybody
22 mentioning anything about unsafe or damaged trailers?

23 A No, never.

24 Q Had you ever had a conversation with Powell before the
25 24th about putting unsafe trailers on the dock?

1 A Yes, I did.

2 Q When --

3 A I mentioned to her --

4 Q When did that happen?

5 A That was around April 19th, one day when she requested a
6 yard sheet, inspect the trailers. I recall one time 20
7 trailers out of service. They were totally damaged. They were
8 bad. And then I say we're running out of trailers and we don't
9 have enough place to put the property.

10 Q And what did she tell you?

11 A She told me put it in the docks and then the drivers will
12 take care of it in the middle of the row. They will see where
13 to look to get repair, that's not your problem. I asked one
14 more time do you want me to put it in and then she said yes.

15 Q Was that the only time you ever talked to her about that
16 issue?

17 A No.

18 Q How many other times did you talk to her?

19 A Around three times.

20 Q When were the other times?

21 A Then after maybe 10 days or 12 days, I mention the same
22 thing. The trailers start increasing.

23 Q When you say then after 10 or 12 days --

24 MR. STUART: Your Honor, may I say that the witness is
25 being interrupted midway through his testimony. And he should

1 be able to give a complete response to the question before he
2 is cut off and directed to another topic.

3 JUDGE GIANNASI: Well --

4 MR. RODRIGUEZ: Your Honor, I'm guiding my witness to give
5 relevant testimony.

6 JUDGE GIANNASI: Overruled.

7 BY MR. RODRIGUEZ:

8 Q Okay. So when you said after 10 or 12 days, can you
9 please give me a date or approximate dates when it is you had
10 these other conversations with Powell about unsafe trailers?

11 A I remember once in March 19, also I mention to her that we
12 have flat tires, the brake lights, they were not working; mark
13 or red lights, they were not good; turn signals, they were bad.
14 I mentioned to her and --

15 Q What did she tell you?

16 A She told me, she say that's not going to be your problem.
17 Just put it in the dock and just make sure that the drivers
18 know, that the drivers pretty much, they knew it, they spot it
19 once they hook up with the lines, they notice the trailers that
20 were bad.

21 Q Did you tell the drivers when the trailers were bad or
22 when they had issues?

23 A Yeah. They even, everyone, we were carrying red tags to
24 know what was the problem. So it was more to identify and then
25 from there take care of that problem.

1 Q Who put those red tags on the trailers?

2 A The drivers and myself.

3 Q So you've mentioned now two occasions when you talked to
4 Powell about bad trailers.

5 A Yeah, she was aware --

6 Q Did you talk to her another time?

7 A She was aware about all these things. And then after that
8 I don't remember exactly the date, but, yeah, I mentioned the
9 same thing. We're running out of trailers and they need a
10 service. Until the day that I get fired, someone cut the
11 airlines from the trailer, April 24 in the morning, at 8:00.
12 At 8:00, that's when I notice that. And from the warehouse
13 they call me on the radio to remove a trailer from the dock.
14 And I said clearly I can't remove that trailer, give me a
15 minute.

16 Q Who did you tell you can't remove that trailer?

17 A His name is Joe. I don't remember his --

18 JUDGE GIANNASI: Joe who?

19 THE WITNESS: I just find out his last name. He told me
20 to move the trailer. Oh, what I say was I can't remove
21 trailer, just give me a minute. But that minute extend to an
22 hour because I went immediately to report it to Phaedra and say
23 someone cut the airlines and we need the mechanic to be fixed
24 that trailer, so we could pull it out. And then she say, okay,
25 I will do it.

1 And then after that, on 9:00 something in the morning or
2 9:30, sometime like that, the mechanic came and he repaired the
3 trailer. And he told me the same thing. He say someone cut
4 the airlines.

5 Q So did somebody talk about -- did this issue come up, what
6 you just told me about the cut airline, did that problem come
7 up again in a conversation at a later point?

8 A The 6:45, no, they never mention to me.

9 Q Okay.

10 MR. RODRIGUEZ: No further questions.

11 JUDGE GIANNASI: What do you want to do with 12 and 13?

12 MR. RODRIGUEZ: We are not offering them into evidence.

13 MR. STUART: Your Honor, could we have some time to review
14 the affidavits?

15 JUDGE GIANNASI: Sure. Do you have the affidavit?

16 MR. STUART: Yes. Thank you.

17 **(Whereupon, a brief recess was taken.)**

18 JUDGE GIANNASI: On the record.

19 **(General Counsel Exhibit 14 marked for identification.)**

20 BY MR. RODRIGUEZ:

21 Q Now I've handed you what's been marked as General
22 Counsel's Exhibit 14. Can you tell me what that is?

23 A That was my last paycheck.

24 Q Your last paycheck from what company?

25 A Pratt Industries.

1 Q And you received that?

2 A Actually, I get it from the ADP website.

3 Q And what is the ADP website?

4 A ADP is where you register for your social security
5 personal information that they or only you know. And out of
6 this computer system, it absorbs or detects where you have been
7 working. And it really just like snapping fingers, right
8 there, it's telling you where you worked, what time you start
9 working, when did you get paid, everything. It's just hard --
10 there's just no way to lie.

11 Q And so this is a copy of your pay stub?

12 A This is a copy of my pay stub, yes.

13 MR. RODRIGUEZ: Your Honor, acting General Counsel would
14 like to offer Exhibit 14 into evidence.

15 MR. STUART: No objection, Your Honor.

16 JUDGE GIANNASI: Okay. What am I supposed to do with
17 this? I mean what is this for? What finding am I supposed to
18 make?

19 MR. RODRIGUEZ: Your Honor, this is relevant to the single
20 employer issue.

21 JUDGE GIANNASI: Like what?

22 MR. RODRIGUEZ: As you can see, the return address on the
23 paycheck is Corrugated Logistics, LLC, 1800-C Sarasota Parkway,
24 Conyers, Georgia. And that is the same headquarters address as
25 Pratt Industries.

1 JUDGE GIANNASI: All right. Received.

2 **(General Counsel Exhibit 14 received into evidence.)**

3 MR. RODRIGUEZ: Okay. No further questions.

4 **CROSS-EXAMINATION**

5 BY MR. COXSON:

6 Q Mr. Mejia, you testified on questions from the General
7 Counsel about certain disciplinary reports that you received,
8 correct?

9 A Yes.

10 Q Do you have those disciplinary reports in front of you?

11 A Not right now.

12 Q You don't have a copy of them?

13 A I used to have a copy. I gave it to the --

14 JUDGE GIANNASI: 10, 11, 12, and 13.

15 COURT REPORTER: 13 wasn't admitted.

16 JUDGE GIANNASI: Yeah, but he may want to question him.

17 COURT REPORTER: I gave them back.

18 JUDGE GIANNASI: He only has 10 and 11.

19 BY MR. COXSON:

20 Q Now with respect to the March 30, 2012, disciplinary
21 report, you signed this and you made no other comments, isn't
22 that correct?

23 A Yeah, that's correct.

24 Q And this discipline had to do with the failure to raise
25 the landing gear off the ground when you pulled the trailer up,

1 correct?

2 A Yeah, it's --

3 Q And as a result of your failure to do that, the truck
4 incurred some damage, correct?

5 A Yeah, the landing gear, the legs of the trailer.

6 Q You also were shown General Counsel Exhibit 13, which is
7 an exhibit showing the document that you signed --

8 JUDGE GIANNASI: No, he didn't sign 13.

9 MR. COXSON: Oh, I'm sorry, Your Honor. I'm looking at
10 the wrong one.

11 JUDGE GIANNASI: 11, right?

12 THE WITNESS: It was 4/4.

13 MR. COXSON: Yes, 11.

14 BY MR. COXSON:

15 Q And that is another discipline that you received for
16 violation of company -- violation of instructions, correct?

17 A By that time, it was check only the, what it say, the box
18 that say counseling, it was only that.

19 Q But there was still --

20 JUDGE GIANNASI: Yeah, but look at the facts of the
21 incident.

22 THE WITNESS: In the bottom timetable for improvement,
23 that wasn't checked. And consequence of failure to improve,
24 the box is also checked, discipline of two and including this
25 charge, that wasn't charge -- that wasn't checkmark, that

1 wasn't check.

2 JUDGE GIANNASI: It was not?

3 THE WITNESS: No, it was not.

4 JUDGE GIANNASI: When you received it, those marks were
5 not in it?

6 THE WITNESS: She would just tell me it was counseling.

7 BY MR. COXSON:

8 Q Mr. Mejia, are you insinuating that this document was
9 changed after you saw it?

10 A Yes, definitely, yes.

11 Q Did you review every single line and every single letter
12 of this document when you received it?

13 A Yeah, she clearly mention, she say read it first before
14 you sign it. And I say --

15 Q Did you ask for a copy of this document when you received
16 it?

17 A No, unfortunately -- unfortunately, no, that was a big
18 mistake that I did.

19 JUDGE GIANNASI: Well, what about, I know I'm interrupting
20 here, now General Counsel 10 also has a checkmark about
21 immediate and discipline up to including discharge. Were those
22 marks on when you received the document?

23 THE WITNESS: No.

24 JUDGE GIANNASI: Okay. Now the lawyer asked you a
25 question about what prompted this. I will let you ask the

1 question again.

2 BY MR. COXSON:

3 Q The discipline, itself, is for failure to follow
4 instructions with respect to reporting information to the
5 shipping or any other department without knowledge of your
6 supervisor. Correct?

7 A Yes, that's --

8 JUDGE GIANNASI: And who was your direct supervisor that
9 they were referring to in this?

10 THE WITNESS: Phaedra Powell.

11 JUDGE GIANNASI: So she was saying that you did not report
12 this to her?

13 THE WITNESS: To immediate supervisor, yes.

14 BY MR. COXSON:

15 Q And, in fact, you did that, isn't that correct? You did
16 go to someone other than Ms. Powell, against her instruction --

17 A By that time it was another employee. His name is Greg.
18 I don't remember his last name. Greg, he came early in the
19 morning, 6:00 in the morning. He said, Guillermo, I need to
20 find out how many empty trailers we have so we can start, you
21 can start putting the docks. And I say give me just five
22 minutes to get a better answer, because I just came just now,
23 6:00, and then from there I will let you know how many
24 trailers, empty trailers we have available so you could use it.
25 So then I get on my truck, start searching, searching. I

1 really didn't see any. They all, they were gone, and some were
2 already loaded.

3 Q But you understand, Mr. Mejia, that the person you were
4 speaking with was not a co-worker of yours. He was someone
5 that worked for a different company, correct?

6 A No, he was supervisor for Pratt, Pratt supervisor.

7 JUDGE GIANNASI: Who was it? What was his name?

8 THE WITNESS: His name was Greg.

9 JUDGE GIANNASI: Greg?

10 THE WITNESS: Greg.

11 BY MR. COXSON:

12 Q If you look at General Counsel Exhibit 14, at the top,
13 your paycheck, it says Corrugated Logistics, LLC. Correct?

14 JUDGE GIANNASI: Well, we can read the document. Yes.
15 The document speaks for itself.

16 BY MR. COXSON:

17 Q Mr. Mejia, you testified that you worked for Industries.
18 Did you ever receive a paycheck from Industries?

19 A No, never. They all, they are direct deposit.

20 Q That wasn't my question. When you were first being hired
21 by Corrugated Logistics, the paperwork that you filled out,
22 that was for Corrugated Logistics, correct?

23 A They give me the application and I return it back to them.
24 Specifically the title, I didn't see it.

25 JUDGE GIANNASI: Is this Greg named in the complaint?

1 MS. BROWN: No, he's not. I believe his last name is
2 Samuels, former shipping and receiving manager.

3 JUDGE GIANNASI: Well, I mean --

4 MS. BROWN: He's not named in the complaint.

5 MR. COXSON: I don't have this marked yet, Your Honor.

6 **(Respondent Exhibit 1 marked for identification.)**

7 MR. COXSON: Could I take one back just for a moment?

8 BY MR. COXSON:

9 Q Mr. Mejia, do you see the document that I have just handed
10 to you?

11 A Yes.

12 Q And this is a receipt of the transportation operational
13 policies at Corrugated Logistics, correct?

14 A Yes.

15 Q And is that your signature below?

16 A Yes.

17 Q And the date there, did you put that there?

18 A Yes.

19 MR. COXSON: Okay. The company moves to introduce, I
20 guess at this point this would be Company Exhibit 1.

21 COURT REPORTER: Employer 1.

22 MS. BROWN: No objection.

23 JUDGE GIANNASI: Well, I take it this was attached to a
24 document?

25 MR. COXSON: Yes, Your Honor. I have that document as

1 well.

2 JUDGE GIANNASI: Well, I'd like to have the whole thing.
3 So you'll stipulate that that's the document that was attached
4 to this. Okay. You know that?

5 MS. BROWN: When I see it. As soon as we see it.

6 **(Pause.)**

7 BY MR. COXSON:

8 Q Mr. Mejia, do you recognize that document that I've just
9 handed to you?

10 A Yes.

11 Q And this is the company's transportation operational
12 procedures, correct, or policies, I'm sorry.

13 A Yeah.

14 Q And that is the document that's referred to in Company
15 Exhibit 1?

16 JUDGE GIANNASI: Respondent's Exhibit 1.

17 MR. COXSON: Respondent's Exhibit 1.

18 JUDGE GIANNASI: All right, do you stipulate that that was
19 what was attached to this Respondent's Exhibit 1?

20 MS. BROWN: Yes, Your Honor.

21 JUDGE GIANNASI: All right. I'll accept Respondent's 1
22 into evidence including the attachment.

23 **(Respondent Exhibit 1 received into evidence.)**

24 MR. COXSON: Thank you, Your Honor.

25 BY MR. COXSON:

1 Q Now, Mr. Mejia, you testified that you were hired as a
2 yard jockey, correct?

3 A Yes.

4 Q And isn't it true that as a yard jockey, you were also
5 required to possess a commercial driver's license?

6 A Yes.

7 Q Okay. And you possess that commercial driver's license,
8 correct?

9 A Yes.

10 MR. COXSON: Your Honor, I could offer evidence to support
11 that, if you think it would be worthwhile, but I think he's
12 already established that he had that.

13 JUDGE GIANNASI: Yes. I don't see where you're going.
14 Shorter is always better.

15 BY MR. COXSON:

16 Q Now isn't it true, Mr. Mejia, that with respect to your
17 testimony regarding GC, I'm sorry, GC Exhibit 12, that Ms.
18 Powell had instructed you to lock down a specific trailer,
19 530013?

20 JUDGE GIANNASI: Do you have 12 in front of you?

21 THE WITNESS: Yes. Yes.

22 JUDGE GIANNASI: This is the one that was not -- one of
23 two that was not admitted into evidence, but you testified
24 about circumstances.

25 THE WITNESS: The one I never saw --

1 BY MR. COXSON:

2 Q I understand that your testimony is that you didn't
3 receive this document. But you were instructed that this truck
4 needed to be locked down, correct?

5 A No.

6 Q Mr. Mejia, it is your job as the yard jockey to ensure
7 that all of the trucks in the yard are either safe to be
8 operated, should be fixed before they are out on the road, or
9 that they are in the process of being fixed, or something along
10 those lines, isn't that right?

11 A Um-hum.

12 Q And that's the tagging system that you were referring to,
13 correct?

14 A Yes.

15 Q And just to make the record clear on what that looks like,
16 I have a photograph of what the tagging system looks like.

17 JUDGE GIANNASI: I really don't think that's necessary.

18 MR. COXSON: Okay.

19 BY MR. COXSON:

20 Q My understanding, though, is that it is your
21 responsibility to ensure that the proper tags are placed on the
22 trucks in the yard when they are stationed in the yard.

23 A Yes.

24 Q Okay. And the red tag is for a truck that is not to be
25 moved by a driver.

1 A Um-hum.

2 Q A yellow tag --

3 JUDGE GIANNASI: You have to say yes or no.

4 THE WITNESS: Yes.

5 BY MR. COXSON:

6 Q A yellow tag is -- clarify that for me?

7 A That is for returns or rejects, or we to --

8 Q What do you mean by return?

9 A Returns? That means that the customer didn't like it
10 because the measurement of the boxes, they are not how the
11 customer wants it. They call it return or reject.

12 Q Okay. And the green means that the truck is fine and
13 ready to be taken out on the road?

14 A Ready to get on the road, is safe.

15 Q And you admitted that you had been instructed at least on
16 one occasion about not speaking with people outside of
17 Corrugated Logistics about equipment issues, correct?

18 A Yes.

19 Q Okay. And that was the same issue that was raised with
20 you on April 23rd, the day that you were -- I'm sorry, April
21 24th, the day that you were terminated, correct?

22 A Yes.

23 Q So that was at least the second time that issue had been
24 raised with you?

25 A Yeah, but I didn't release no information or what I say on

1 the radio is.

2 MR. COXSON: Your Honor, I'd just ask that he answer the
3 question.

4 JUDGE GIANNASI: Well, that's his answer. This is his
5 answer. Answer it anyway you think is responsive.

6 THE WITNESS: Yes, they respond, but they didn't release
7 any private information.

8 BY MR. COXSON:

9 Q Any private information according to your understanding of
10 what private information is.

11 A Means to let everybody know what's going on, what exactly
12 what was going on in that specific trailer.

13 Q But you agree that Ms. Powell had instructed you not to
14 speak -- before you had approached her first, not to speak with
15 any customers or anyone outside of Corrugated about equipment
16 issues, that those issues were to be raised with her first so
17 that she could look into it and address the issue, correct?

18 A Yes, I did.

19 Q Thank you. And just so I'm clear, to return to the fact
20 that you had a CDL license, you are familiar with the DOT
21 regulations --

22 A Yes.

23 Q -- as well?

24 A Yes, sir.

25 Q Now it is your understanding, correct, that as a yard

1 jockey, aside from inspecting the trucks as they are stationed
2 and parked, you also had to move the trucks?

3 A Yes.

4 COURT REPORTER: Move up a little bit. Thank you.

5 BY MR. COXSON:

6 Q And in that respect, you were responsible for, before you
7 moved the trucks, making sure they were safe to drive as well?

8 A Yes, that's correct.

9 Q It was your responsibility, not just the drivers'
10 responsibility, correct?

11 A Yes, that's correct.

12 Q You testified that Ms. Powell had mentioned that you work
13 hard and I think you used the term, correct me if I'm wrong,
14 that you work like a horse, correct?

15 A Yes, that's what she told me.

16 Q You would agree with me, wouldn't you, that someone could
17 work hard, but not necessarily be working --

18 MR. RODRIGUEZ: Objection.

19 JUDGE GIANNASI: Sustained.

20 BY MR. COXSON:

21 Q You also testified that you went to a meeting, a union
22 meeting, correct?

23 A Yes.

24 Q And that you signed a card at the meeting?

25 A Yes.

1 Q And there were no company representatives present at that
2 meeting, correct, it was just the employees and the union
3 representatives?

4 A Yes, that's correct.

5 Q And you said you took a card back from that meeting, a
6 blank card, correct?

7 A Yes.

8 Q And it's true, isn't it, I believe you testified that you
9 gave the card to Mr. Messina?

10 A Yes.

11 Q And it's true, is it not, nobody saw you hand that card to
12 Mr. Messina?

13 A No, no one saw it.

14 Q Isn't it also true that at no time during any of your
15 counseling sessions with Ms. Powell or during the termination
16 meeting that anyone referenced the union in any way, is that
17 correct?

18 A Yeah, no one mentioned.

19 MR. COXSON: Your Honor, could I have just one minute just
20 to look at my notes for a second?

21 JUDGE GIANNASI: Yes.

22 **(Pause.)**

23 MR. COXSON: Just one other question or one with a couple
24 of follow-ups. Are we back on the record?

25 JUDGE GIANNASI: We never went off.

1 MR. COXSON: We're on?

2 JUDGE GIANNASI: Go ahead.

3 MR. COXSON: Okay, I'm sorry.

4 BY MR. COXSON:

5 Q You testified that you were, I think you are responsible
6 for parking the trailers, moving the trailers, and in addition
7 to your duties of ensuring when they are in a stationary
8 position that they are safe to be driven off, correct?

9 A Yes.

10 Q But isn't it true that you told Ms. Powell that your
11 responsibility was solely to park the trailers, that you don't
12 drive?

13 A Up to one point I mention to her.

14 Q But in fact you do drive to a certain degree, correct?

15 A Less than not even a mile, not even half a mile.

16 Q But you told Ms. Powell that with regard to the tagging
17 system that the drivers are responsible, correct?

18 A Fifty and fifty percent to one point.

19 Q But you didn't tell her that. You told her that the
20 drivers are responsible and you were taking away the
21 responsibility for yourself by putting the responsibility on
22 the drivers, correct?

23 MR. RODRIGUEZ: Objection, Your Honor. He's already
24 testified about what he said.

25 JUDGE GIANNASI: That's argumentative.

1 MR. COXSON: Okay.

2 BY MR. COXSON:

3 Q I'm sorry, this is marked up, but this is a copy of your
4 affidavit dated May 2nd. Can you read the part that is circled
5 and underlined there in the middle of the page? See right
6 here?

7 MR. RODRIGUEZ: What page are you on?

8 MR. COXSON: I'm sorry, Page 3.

9 THE WITNESS: Three. I told Powell that I don't drive, I
10 just park trailers.

11 BY MR. COXSON:

12 Q And the rest of the sentence there?

13 A I say the drivers will be responsible.

14 Q Thank you. Mr. Mejia, you provided two affidavits to the
15 Board, isn't that correct?

16 A Yes.

17 Q And the one I just showed you is the first one that you
18 provided?

19 A Yes.

20 Q And the second one you provided on June 18, about a month
21 and a half after the first one, correct?

22 A Yes.

23 Q And the only, I mean could you tell me what prompted you
24 to provide this second affidavit to the Board?

25 MR. RODRIGUEZ: Objection, Your Honor. How is this

1 relevant?

2 JUDGE GIANNASI: Well, yeah, what's the point of it?

3 MR. COXSON: Your Honor, this second affidavit contains no
4 new information. It was information that was available to --

5 JUDGE GIANNASI: So what? I mean if he didn't testify
6 about it. It doesn't matter what was in the affidavit unless
7 it's a conflict, you read something which you allege is a
8 conflict. I will sustain that objection. I think you've
9 exhausted that point.

10 MR. COXSON: Thank you very much, Your Honor.

11 JUDGE GIANNASI: All right. Any redirect?

12 MR. RODRIGUEZ: Yes, Your Honor.

13 **REDIRECT EXAMINATION**

14 BY MR. RODRIGUEZ:

15 Q Mr. Mejia, before you testified on cross-examination about
16 General Counsel's Exhibit 11, the warning that you received on
17 April 4th, you said that the incident occurred at 6:00 in the
18 morning, is that accurate?

19 A Yes.

20 Q What time -- what's your shift? What are your usual hours
21 of work?

22 A Very early, sometimes 6:00 in the morning to 5:00,
23 4:00 p.m., and sometimes it was 7:00 a.m. to 5:00 or 7:00 p.m.

24 Q And what about Phaedra Powell, when did she arrive at the
25 yard?

- 1 A All the time, 7:00 in the morning.
- 2 Q And what time did she leave?
- 3 A Mostly 5:00 p.m.
- 4 Q And the incident that occurred that resulted in the
5 warning or the counseling on April 4th, was Powell in the yard
6 when that happened, when that incident happened?
- 7 A She was not present at all.
- 8 Q Okay. When you were on cross-examination, you also
9 testified that when you handed Messina the card, no one saw
10 you.
- 11 A Yes, that's correct.
- 12 Q How do you know no one saw you?
- 13 A Because I did it in the specific area where no one was
14 around.
- 15 Q There was nobody around.
- 16 A Nobody around.
- 17 Q Are there cameras in the yard?
- 18 A Naturally at this point, yes; before, no. It was only one
19 or two as much.
- 20 Q Are you the only employee that performs yard jockeying
21 duties?
- 22 A By that specific time, after, yes, she (sic) was.
- 23 Q You were the only one that --
- 24 A No, it was more drivers. It was more drivers.
- 25 Q Okay. How many more drivers?

1 A As I recall, four or five.

2 JUDGE GIANNASI: These are yard jockeys?

3 THE WITNESS: They're drivers, but then after that she
4 decide to tell them to do as a yard jockey, to work for --

5 JUDGE GIANNASI: After what?

6 THE WITNESS: After 5:00 p.m.

7 JUDGE GIANNASI: Oh, after 5:00 p.m.

8 THE WITNESS: Yeah, because I am regulated by DOT hours,
9 no more than 60 hours per week.

10 JUDGE GIANNASI: Okay.

11 BY MR. RODRIGUEZ:

12 Q So every trailer that's parked or tagged, do you park
13 every single trailer?

14 A Not necessarily, could be the other yard jockey.

15 Q And do you tag every single trailer?

16 A Yes, when I was on my shift, yes.

17 Q When you were on your shift.

18 A Yes.

19 MR. RODRIGUEZ: No further questions.

20 MR. COXSON: Just a couple, Your Honor.

21 **RECROSS EXAMINATION**

22 BY MR. COXSON:

23 Q Mr. Mejia, looking at GC Exhibit 11 again, which you just
24 testified about, you testified that Ms. Powell was not at the
25 office after 5:00 p.m., I believe when you had the conversation

1 with someone from Allentown Corrugating, is that correct?

2 A After -- it was variable the hours. She was not all the
3 time 5:00 p.m. hours leaving.

4 Q But is it your testimony that the reason that you didn't
5 go to Ms. Powell to address whatever issue it was with her
6 first is that she wasn't there?

7 A Yeah, she wasn't there in the morning.

8 JUDGE GIANNASI: She was not there in the morning?

9 THE WITNESS: She was not there in the morning. At 6:00
10 in the morning, she wasn't there.

11 BY MR. COXSON:

12 Q And what time would she be arriving?

13 A Normally, 7:00.

14 Q Okay. So an hour later, she would have arrived?

15 A Yeah.

16 Q And isn't it true that you could have told the person who
17 asked you the question --

18 MR. RODRIGUEZ: Objection, speculative.

19 JUDGE GIANNASI: Overruled.

20 BY MR. COXSON:

21 Q -- that you needed to speak with your supervisor first, as
22 you had been instructed before you got back to him with an
23 answer?

24 A Yes and no. It's hard to answer that because he was, that
25 specific supervisor, he was waiting for me for an answer.

1 JUDGE GIANNASI: Who was this supervisor that you were
2 talking to?

3 THE WITNESS: His name is Greg. He was in charge of that
4 specific, they call it shipping and receiving department. He
5 was in charge to say what trailer has to be loaded with a
6 specific product and specific route. He was pretty much in
7 charge.

8 JUDGE GIANNASI: And he had always been there?

9 THE WITNESS: He was all the time there. Early in the
10 morning, he was there.

11 BY MR. COXSON:

12 Q I'm sorry. Mr. Mejia, and this Greg person from shipping
13 and receiving, he was not a Corrugated Logistics employee, was
14 he?

15 A He was.

16 JUDGE GIANNASI: Well, this is somebody who told you what
17 to do?

18 THE WITNESS: Yeah, because Phaedra told him you got to
19 listen what he says. Everything what he says, you've got to
20 respond to him. So that's what I was doing, what he told me to
21 do.

22 BY MR. COXSON:

23 Q But you were responding to him as a result of instruction
24 from Ms. Powell?

25 A Instruction from Phaedra, yes.

1 JUDGE GIANNASI: All right, anything else? We've gone
2 back and forth quite a bit on this.

3 MR. COXSON: I have no further questions, Your Honor.

4 JUDGE GIANNASI: All right, you're excused.

5 THE WITNESS: Thank you.

6 **(Witness excused.)**

7 JUDGE GIANNASI: Next?

8 MS. BROWN: We call Michael Messina.

9 THE WITNESS: Good afternoon, Your Honor.

10 JUDGE GIANNASI: Good afternoon. Come on up here and
11 raise your right hand.

12 (Whereupon,

13 **MICHAEL MESSINA,**

14 was called as a witness by and on behalf of the General Counsel
15 and, after having been duly sworn, was examined and testified
16 as follows:)

17 JUDGE GIANNASI: Be seated, please. Give your name and
18 address to the reporter, and speak up.

19 THE WITNESS: Good afternoon. My name is Michael Messina.

20 COURT REPORTER: Spell your last name.

21 THE WITNESS: M-E-S-S-I-N-A, 8940 -- do you need my
22 address? 8940 Browning Run Circle, Browningsville,
23 Pennsylvania.

24 **DIRECT EXAMINATION**

25 BY MS. BROWN:

- 1 Q Mr. Messina, do you work for a company known as Pratt
2 Corrugated Logistics?
- 3 A Yes, I do.
- 4 Q What's your job classification?
- 5 A Company driver.
- 6 Q When did you first start working there?
- 7 A April 12th.
- 8 Q Of?
- 9 A 2012.
- 10 Q Would you tell us what steps you took to get the job,
11 please?
- 12 A Yes. I first went in, filled out an application,
13 preliminary information. I was later given a handful of
14 documents to take home to finish filling out.
- 15 Q Who gave you the documents?
- 16 A Phae, Phae Powell.
- 17 Q You took the documents home to fill out?
- 18 A Right.
- 19 Q Okay. Did you go in alone?
- 20 A No. I actually went in with another gentleman.
- 21 Q Okay. What was his name?
- 22 A Charles Boyington.
- 23 Q Did he fill out an application or take one?
- 24 A Yes, he did.
- 25 Q When you went there, was there a hiring sign out front?

1 A Yes, there was.

2 Q What happened next in the process of your being hired?

3 A When I brought the documents back that I had taken home, I
4 was given a voucher to go take a physical, DOT drug screen.

5 Q And who gave you that?

6 A Phae Powell.

7 **(General Counsel Exhibit 15 marked for identification.)**

8 BY MS. BROWN:

9 Q I'm showing you what's been marked as General Counsel's
10 Exhibit 15. Would you take a look at that, please? What is
11 that?

12 A This is my copy of the documentation printout, the whole
13 testing forms, as well as the drug screen.

14 Q The top of the form where it is filled out, it says Pratt
15 Industries, Michael Messina, did you fill that out?

16 A No.

17 Q Who filled it out?

18 A Phae, excuse me, Phae Powell.

19 JUDGE GIANNASI: Where is this?

20 MS. BROWN: I'm sorry. It's a light copy. That's the
21 original. I'll see if I can darken it for the record. Here,
22 this writing.

23 JUDGE GIANNASI: Oh, I see.

24 MS. BROWN: It's this writing.

25 MR. STUART: Okay, thanks.

1 JUDGE GIANNASI: Well, I would say that you want to get a
2 copy that's legible. I know I will have the original, but this
3 cannot be this --

4 MS. BROWN: I'll have them reproduced darker.

5 BY MS. BROWN:

6 Q So the top portion of the form was completed when she gave
7 it to you?

8 A Yes, it was.

9 MS. BROWN: I'd like to offer General Counsel's Exhibit 15
10 into evidence.

11 JUDGE GIANNASI: Any objection?

12 MR. STUART: That's what he said he has.

13 JUDGE GIANNASI: You have no objection?

14 MR. STUART: Well, I don't -- I've never seen this
15 document before and I don't know who filled it out.

16 JUDGE GIANNASI: Received.

17 **(General Counsel Exhibit 15 received into evidence.)**

18 BY MS. BROWN:

19 Q After you took your physical, did someone call you to tell
20 you to report to work?

21 A Erin Cutler asked me if I was still interested in my work.
22 She's the human resources lady.

23 Q Okay. Do you remember when she called you?

24 A I believe it was on the 9th. Yes, on the 9th of April.

25 Q Did you discuss Mr. Boyington with anyone in management?

1 A The day I reported for work, Phae asked me if he was still
2 interested in the job.

3 JUDGE GIANNASI: And you say you reported on April 12th?

4 THE WITNESS: Yes, Your Honor.

5 BY MS. BROWN:

6 Q Who did you report to?

7 A Phae Powell.

8 Q And what hours did you work?

9 A I was given an afternoon/evening shift, 12:00 to midnight,
10 12:00 in the afternoon to midnight.

11 Q And where did you make deliveries and pickups?

12 A New York, Staten Island, Jersey, Pennsylvania.

13 Q And those deliveries and pickups, were you going to other
14 Pratt facilities?

15 A Yes. Staten Island is Pratt USA, I believe, or Pratt
16 Industries. I'm not sure at the time if Emmaus was also a
17 Pratt entity. I know it is now, I've heard that. And other
18 Pratt -- no, for the length of time that I was doing deliveries
19 with them, it was pretty limited. And I might add that I was
20 doing night jockey work, as well. So generally I'd do one run
21 a day, come back, and do the responsibilities of night jockey
22 work.

23 Q Do you know Francisco Ortiz?

24 A Yes, I do.

25 Q Who is he?

1 A He's the night shift supervisor.

2 Q So when you returned at night, was there anyone at the
3 facility with more authority than him?

4 A No, ma'am.

5 Q Describe your interaction with him, please.

6 A I received my work orders through him. I reported to him.
7 And he was the one who dismissed me at the end of the shift,
8 when he no longer needed me.

9 Q Were you assigned to a mentor, when you first started
10 working for Pratt?

11 A A mentor?

12 Q Yes.

13 A Yes, I was.

14 Q And who was your mentor?

15 A His name was Steve West.

16 Q Did you know that Teamsters Local 773 was trying to
17 organize the drivers?

18 A I found that out during my first week, yes.

19 Q How did you find out about it?

20 A Chris, the gentleman sitting behind you.

21 Q Christian Salazar?

22 A Yes, ma'am.

23 Q And what did you learn from Mr. Salazar?

24 A That they were interested in organizing a unit, that,
25 yeah, the Teamsters were having a meeting as well and would I

1 be interested.

2 Q Did anybody advise you not to attend the meeting?

3 A Yes.

4 Q Who?

5 A Well, Mr. West, for one, Steve West, the gentleman I was
6 directly in contact with as my mentor. And, well, Mr. Ortiz as
7 well.

8 Q Francisco Ortiz?

9 A Yes, ma'am.

10 Q Okay. Tell us about that. When did you talk to Mr.
11 Ortiz?

12 A Well, because I was working with him in the evenings, it
13 came up after Chris had been fired. And basically what was
14 said was there was a meeting that evening. It was pretty much
15 common knowledge at this point, I think, amongst everybody.
16 And that if I was smart, I'd stay away from certain individuals
17 that were associated with the union or becoming associated with
18 the union and that meeting.

19 Q And who was present -- was anyone else present other than
20 you and Mr. Ortiz?

21 A No, ma'am.

22 JUDGE GIANNASI: Is this what Ortiz told you?

23 THE WITNESS: Excuse me, sir?

24 JUDGE GIANNASI: Is this what Ortiz told you?

25 THE WITNESS: Yes. That's exactly what he told me, that I

1 should stay clear of certain individuals, mind my own business
2 in other words, and remain neutral.

3 JUDGE GIANNASI: Is that what he said? I mean you're
4 telling me his exact words, as far as you can remember?

5 THE WITNESS: Oh, no, Your Honor. As best as I can
6 remember, his exact words were to stay clear of this situation,
7 do myself a favor, in other words.

8 BY MS. BROWN:

9 Q Did you talk to anyone else in management about the union?

10 A Yes, I did.

11 Q Who else did you talk to?

12 A Phae Powell.

13 Q And when did you talk to Ms. Powell?

14 A Excuse me, I'm trying to remember exactly.

15 Q Do you remember what you talked about?

16 A Well, yeah, that I had been approached about a meeting.

17 This was after the firing of Chris, so I'm assuming it was on
18 or about, well, let's see, wait a minute. It was on or about
19 I'll say the 15th of April, the 16th. There was another
20 instance I spoke with Phae and that was on the 25th.

21 Q Okay. Tell me about the first incident. What happened?

22 A Right. Well, I just, because I was new and on probation
23 and had been talking with Steve West that I wanted to make it
24 clear to Phae I had no involvement with the organization of the
25 Teamsters, although I had 23 years with them in Orlando,

1 Florida, and that was on my application.

2 JUDGE GIANNASI: Well, what we want to know is the
3 circumstances of the meeting, what you said to her and what she
4 said to you.

5 THE WITNESS: Okay. I told her --

6 JUDGE GIANNASI: How did it start out?

7 THE WITNESS: I went into her office.

8 JUDGE GIANNASI: Yes.

9 THE WITNESS: And I said, Phae, I was approached about a
10 meeting and I have no interest in -- I wouldn't be able to make
11 it, I had no interest in going to it, because I worked the
12 night shift. And she said fine.

13 JUDGE GIANNASI: Did you identify what the meeting was?
14 I'd like to know exactly what was said.

15 THE WITNESS: Okay. I'm trying to remember exactly. Just
16 that I was going to remain neutral, Your Honor, that I had no
17 interest in going to --

18 JUDGE GIANNASI: But you were going to remain neutral
19 insofar as the NFL playoffs?

20 THE WITNESS: No, sir, in the meeting or any association
21 with promoting the union.

22 JUDGE GIANNASI: Well, was the union mentioned?

23 THE WITNESS: Yes.

24 JUDGE GIANNASI: What we want here is testimony as to what
25 was said by you and the other party. So you made this

1 statement. And did she respond?

2 THE WITNESS: She acknowledged what I said, but --

3 JUDGE GIANNASI: I'm not interested in she acknowledged.

4 THE WITNESS: Yeah.

5 JUDGE GIANNASI: What did she say?

6 THE WITNESS: No, she did not respond to it.

7 JUDGE GIANNASI: She did not respond to it, all right.

8 BY MS. BROWN:

9 Q Now you testified that this meeting was after Christian
10 Salazar -- you went to her after Christian Salazar had been
11 fired?

12 A Yes.

13 Q And were you talking about the April 23rd meeting?

14 A Yes.

15 Q Did anyone give you a union authorization card?

16 A Yes.

17 Q Who?

18 A Guillermo.

19 Q Where were you when he gave it to you?

20 A In the yard, well, what we call the yard, where we stage
21 trailers, just outside the human resource office, if you will.

22 Q And did you show that authorization card to anyone?

23 A Yes, I did.

24 Q Who did you show it to?

25 A Steve West, who told me to get rid of it.

1 Q And who else?

2 A Phae Powell.

3 Q What was her response?

4 A She didn't want to have anything to do with it. She
5 directed me to the human resource lady, Erin Cutler.

6 Q Okay. So you went to Powell. Tell us what happened. You
7 went to Powell, and she said? What happened?

8 A Well, this is just after Guillermo was fired. So I
9 brought the card in. I don't want to speculate, but I believe
10 that was something to do with why he was fired. And I did not
11 -- I didn't want to cost myself my job.

12 MR. STUART: Move to strike. He doesn't know why he was
13 fired, what's going on in his mind.

14 JUDGE GIANNASI: Well, I'm not going to make a finding
15 about that. That's his response.

16 THE WITNESS: So I thought by just giving the card, as I
17 had mentioned to Phae before, I did not want to have anything
18 to do with the union. I gave her the card. She would have
19 nothing to do with it. She directed me to human resources. I
20 brought it there, handed it over to Erin Cutler, who thanked me
21 for my loyalty, took the card, put it in an envelope, and put
22 it in her desk.

23 JUDGE GIANNASI: That was a blank card?

24 THE WITNESS: Yes, sir.

25 JUDGE GIANNASI: Now it's clear that Steve West is an

1 employee?

2 MS. BROWN: Yes.

3 BY MS. BROWN:

4 Q Did you go to work on April 27th?

5 A Yes.

6 Q What happened at the end of your shift?

7 A I was told to come into the office.

8 Q Who told you?

9 A Chris Westage. Christian Westgate.

10 Q The dispatcher?

11 A Yes, ma'am.

12 Q Okay. You went into the office. Who was present?

13 A Erin Cutler, Phae Powell, and Chris Westgate.

14 Q Okay. And what happened?

15 A They told me they were going to let me go, they no longer
16 needed my services.

17 Q Who did the talking?

18 A Erin Cutler.

19 Q Okay. And what was your response?

20 A I was distraught, very upset, obviously, wanted to know
21 why. And I told them I believed it was because of the union.
22 And they told me they could not comment on that. There was no
23 comment to be made. And they told me that they are simply
24 going with third-party. And I says I haven't even worked here
25 for two weeks. It took me longer to process into this company.

1 Why would you let somebody go in this way, and it's no way to
2 treat an American worker.

3 Q And how did that meeting end?

4 A With them giving me a severance package.

5 Q When you were hired, did anyone tell you that the job was
6 temporary?

7 A No, ma'am.

8 Q Did anyone tell you that the Employer might lay off the
9 drivers?

10 A No, ma'am. As a matter of fact, I was told that this job
11 would be going to a night shift as well.

12 Q Who told you that?

13 A Phae Powell. She indicated that the trucks would become
14 slip-seat, which means more than one driver using the truck
15 during the day. There would be a second shift occupying that
16 truck.

17 Q Did you receive training on something called PeopleNet?

18 A Recently.

19 **(General Counsel Exhibit 16 marked for identification.)**

20 BY MS. BROWN:

21 Q I'm showing you what's been marked as General Counsel's
22 Exhibit 16. Would you take a look at that? What is that?

23 A That's a document I need to carry with me for a month. It
24 allows me to have two log books in my tractor trailer.

25 Q And you're currently carrying that document?

1 A Yes. I need this with me in case DOT does a spot
2 inspection.

3 **(General Counsel Exhibit 17 marked for identification.)**

4 BY MS. BROWN:

5 Q I'm showing you what's been marked as General Counsel's
6 Exhibit 17. And what is that?

7 A My corporate credit card.

8 MS. BROWN: I'd like to offer General Counsel's Exhibits
9 16 and 17 into evidence.

10 MR. STUART: No objection.

11 JUDGE GIANNASI: Received.

12 **(General Counsel Exhibits 16 and 17 received into evidence.)**

13 MS. BROWN: Nothing further.

14 COURT REPORTER: Give me those.

15 THE WITNESS: Yes, sir.

16 JUDGE GIANNASI: Affidavits?

17 MR. STUART: Yes, Your Honor. We'd like to request all
18 affidavits provide by Mr. Messina to Region 4. Thank you.

19 MS. BROWN: Let the record show I'm turning over a
20 six-page affidavit of Michael Messina.

21 JUDGE GIANNASI: Okay, we'll have a 10-minute recess.

22 **(Whereupon, a brief recess was taken.)**

23 JUDGE GIANNASI: On the record. Cross?

24 MR. STUART: Thank you, Your Honor.

25 **CROSS-EXAMINATION**

1 BY MR. STUART:

2 Q Mr. Messina, I'm Eric Stuart and I represent Pratt
3 Corrugated Logistics. You understand that you were employed by
4 Pratt Corrugated Logistics, don't you? Did you not understand
5 the question? Would you like me to ask you again?

6 A No, no, no. I mean I've heard so many different names at
7 this point, sir.

8 Q Well, who paid --

9 A By Corrugated Logistics.

10 Q I'm sorry?

11 A I don't know who pays me. It's paperless. You don't get
12 a paycheck. It's all paperless and you've got to go on the
13 internet to be able --

14 JUDGE GIANNASI: You know his opinion of who hired him or
15 who employed him is not important to the single employer issue.
16 That will come in the proofs. And this witness' assessment is
17 not significant.

18 MR. STUART: Okay, Your Honor.

19 JUDGE GIANNASI: Frankly, after some of these documents
20 that I've seen, I'm surprised that anybody would know who
21 employed anybody.

22 MR. STUART: Well, I hope you wouldn't prejudge that, Your
23 Honor, until you hear the whole case.

24 BY MR. STUART:

25 Q So, Mr. Messina, you are familiar with Pratt Corrugated

1 Logistics as we are sitting here today, correct?

2 A Yes.

3 Q And you filled out an employment application for
4 employment as a driver with that company, correct?

5 A Correct.

6 Q And that's what Corrugated Logistics does, it delivers
7 things, right?

8 A Well, I mean that's what I do, I deliver things.

9 Q Okay, good. And on that application, you specifically
10 indicated that you had a history, driving history, most of your
11 driving history was out of Teamsters Local 385.

12 A Correct.

13 Q So you were applying to the company as an open and visible
14 union member. You weren't making any bones about it, correct?

15 A Well, I was making it apparent that I had, in the past,
16 most of my driving history with Teamsters Local 385.

17 Q Right. And you obviously were not reluctant to disclose
18 that information, correct?

19 A Nor was I an active member, correct.

20 Q My question as you were not reluctant in any way to
21 disclose that application.

22 MS. BROWN: Objection, relevance.

23 THE WITNESS: DOT requires --

24 JUDGE GIANNASI: Just a minute. That's on the
25 application. You have that fact and you can make that

1 argument. You don't have to convince him.

2 MR. STUART: Yes, Your Honor. Sometimes, on cross-
3 examination we have to have a line of questioning and I'm sorry
4 if it was too many questions. I'll move on.

5 JUDGE GIANNASI: It is in the application, is it not?

6 MS. BROWN: It is.

7 JUDGE GIANNASI: So you could make that point. When you
8 write your brief and you make that argument, you can make that
9 point.

10 MR. STUART: I'll continue, thank you, do the best I can.

11 BY MR. STUART:

12 Q You testified to a lot of conversations and I'm sorry some
13 of it was unclear. The administrative law judge asked you to
14 kind of clarify what was said. And I'm going to try to do the
15 same thing, if that's okay. On or around April 16th, you had a
16 conversation with Phaedra Powell. And you refer to her as
17 Phae, but her real name is Phaedra Powell. Is that correct?

18 A I was made aware of that two weeks ago. I only knew her
19 as Phae.

20 Q But you now know that her name --

21 A Now I know her as Phaedra Powell, yes.

22 Q Her last name is Phaedra Powell. And she is the logistics
23 manager at Corrugated Logistics. She was your direct
24 supervisor. Is that correct, sir?

25 A Yes.

1 Q Okay. So on or around April 16th, you walked into her
2 office, correct?

3 A Yes.

4 Q And she didn't ask you to come in there. You walked in of
5 your own volition?

6 A Right.

7 Q That was your idea, right? And --

8 COURT REPORTER: You have to say yes or no.

9 THE WITNESS: Yes.

10 BY MR. STUART:

11 Q And there was something that you wanted to discuss with
12 her, correct?

13 A Yes.

14 Q She didn't ask you to tell her about a union meeting. You
15 volunteered that information to her, correct?

16 A Correct.

17 Q And, in fact, she told you in other conversations that she
18 wasn't talking about anything, correct?

19 A Excuse me? Repeat the question?

20 Q She had told you in other conversations that she didn't
21 want to be talking about any union.

22 A Right, correct. She couldn't discuss anything about the
23 union.

24 Q So you walked in there, you volunteered to her some
25 information. Now you talked about getting a card from someone,

1 right? That was --

2 A From Guillermo.

3 Q From Guillermo Mejia. And it's correct that that card was
4 handed to you inside Mr. Mejia's vehicle?

5 A Yes.

6 Q So let me just see if I understand this. You weren't out
7 there, standing out in the yard. It was inside of a vehicle.
8 Is that correct?

9 A Yes.

10 Q So let me see if I understand. Mr. Mejia was sitting in a
11 vehicle and you were sitting next to him or --

12 A No.

13 Q -- were you sitting behind?

14 A There is no second seat in the jockey truck. It's all
15 windows and open.

16 Q So you both --

17 A I was standing there. He was sitting in his chair.

18 Q Right, okay. And he handed you what you believe to be as
19 a union authorization card.

20 A Correct.

21 Q And I take it is it smaller than this piece of paper?

22 A I would guess it to be three by five.

23 Q Okay. It's a three by five card?

24 A Card, yes, sir.

25 Q Okay. Now you talked about Francisco Ortiz.

1 A Yes.

2 Q Now he supervises the warehouse people, correct?

3 A I'm not sure what his full job title is, sir. I know that
4 he supervised me, when I was there. But, yes, he is the only
5 supervision on the night shift that I'm aware of.

6 Q Now what's going on in the plant at night?

7 A Production of boxes, loading of trailers, moving of
8 trailers, full trailers, put to the yard, empty trailers
9 brought to the door.

10 Q So there are other things going on at the Macungie
11 facility that are not related to driving.

12 A Yes.

13 Q You say there is production, there's other things going
14 on, correct?

15 A Yes.

16 Q So let's talk about this conversation that you had with
17 Mr. Ortiz. He didn't specifically say anything to you about
18 unions or unionization or the Teamsters, isn't that right?

19 A No.

20 Q He didn't?

21 A Yes, he did.

22 Q Well, you said yes, he did, and no, he didn't. So let me
23 ask you this question.

24 A Well, I was trying to understand your question, the way
25 you were putting it to me, sir.

1 Q Okay. In this conversation, he said you need to stay away
2 from certain guys.

3 A Yes.

4 Q He used those words, you need to stay away from certain
5 guys?

6 A Best of my recollection, yes.

7 Q Right. And did he also say that he was not going to make
8 any comments about the Teamsters? Did he say those words?

9 A No. He was directed not to make comments about the
10 Teamsters.

11 Q He was told not to make any comments about the Teamsters.

12 A Correct.

13 Q Okay. So he said those words. And he didn't say anything
14 else about any unions or unionization in that conversation,
15 isn't that true?

16 A Rephrase the question or repeat it, please?

17 Q After he said I'm not allowed to say anything about the
18 Teamsters, he didn't say anything else to you in that
19 conversation about unions or unionization --

20 A Correct.

21 Q -- isn't that true?

22 A Um-hum.

23 Q And the only other thing that he said that you can
24 remember was do yourself a favor, mind your own business.

25 A Correct.

- 1 Q And that's the whole conversation?
- 2 A Yes.
- 3 Q Nothing else?
- 4 A No.
- 5 Q Nothing else was said, is that correct?
- 6 A Correct.
- 7 Q Okay. Now getting back to this authorization card, you,
- 8 again I ask, went into Phaedra Powell and produced the card to
- 9 her, is that right?
- 10 A Yes.
- 11 Q And just so the record is clear, she didn't ask you for
- 12 the card. You volunteered it.
- 13 A Right.
- 14 Q Just as you had volunteered the information previously
- 15 about the union meeting, is that right?
- 16 A Right.
- 17 Q Okay. And she said that she didn't want the card,
- 18 correct?
- 19 A Right.
- 20 Q All right. Now do you recall during the week of April 24
- 21 meeting in a conference room with some drivers and a fellow by
- 22 the name of Jay Greer?
- 23 A He didn't identify himself at that time as Jay Greer. He
- 24 simply called himself Jay.
- 25 Q Jay.

1 A He was reluctant to give his last name.

2 Q Did you ask him for his last name?

3 A Yes, we did. And he said he was afraid of identity theft.

4 Q I see. And you were asked -- he asked for your input or
5 the input of participants on how the company could increase
6 productivity, correct?

7 A Efficiency or productivity. He said that's why he was
8 hired as a consultant by Mr. Pratt.

9 Q And folks at the meeting, your co-workers were giving what
10 you felt to be legitimate suggestions?

11 A Well, they had been there longer than me. You've got to
12 remember I had been there less than two weeks, was still on a
13 probationary period. I was reluctant to say anything that
14 could cost me my job.

15 Q Okay. But what I'm saying is the comments and the
16 discussion at the meeting that you heard while you were present
17 involved suggestions by your co-workers with regards to
18 efficiency and productivity, correct?

19 A Yes.

20 Q And during those -- during that meeting in the conference
21 room with your co-workers, with Jay, there was no discussion
22 about unions or unionization, isn't that correct?

23 A There was some discussion as far as overtime pay or rate
24 being paid that was made by me. Whether that referred to the
25 unions there or not or how that was spoken I don't recollect

1 everything that was said. But I did make the comment on it
2 would be nice to get overtime, time and a half I mean.

3 Q I'm going to show you your affidavit --

4 A Right.

5 Q -- that was submitted to the National Labor Relations
6 Board. You signed it on May 2.

7 A Correct.

8 Q And I take it that you came down to the Board with a whole
9 bunch of other folks on May 2?

10 A Sure, yes.

11 Q Were you brought down by Darren Frye --

12 A Yes.

13 MS. BROWN: Objection, relevance.

14 JUDGE GIANNASI: Overruled.

15 BY MR. STUART:

16 Q So here's the affidavit dated May 2. And by the way, were
17 you all sitting in the same room together when you gave the
18 affidavit?

19 A No.

20 Q You were separated?

21 A Yes.

22 Q So it was only you and Darren, I guess, in the room?

23 A No, it was just me and the National Labor Relations Board
24 lady.

25 Q All right, so May 2. I'm going to direct your attention

1 to Page 4 of the affidavit, the first paragraph. I'm asking
2 you to take a look, I've marked the first full paragraph for
3 you so you could read it from the beginning to the end, where
4 I've marked the end of the paragraph.

5 A Sure.

6 Q And then let me know when you're done. Take all the time
7 that you need.

8 A Okay, I'm through.

9 Q You read fast.

10 A Well, I spoke it.

11 Q So now that you've reviewed your affidavit, and I take it
12 that you understood that the National Labor Relations Board
13 would rely on that, on the information you provided to be
14 correct --

15 A Yes.

16 Q -- is accurate?

17 A Yes. I'm sorry, sir. Yes.

18 Q To be correct and accurate, right?

19 A Yes.

20 Q There is nothing in here about a conversation about unions
21 or the Teamsters or anything else in that paragraph.

22 A Right.

23 Q Okay.

24 A Yes.

25 Q There is not?

1 A Yes.

2 Q So when you provided the affidavit on May 2, I take it,
3 the events of that meeting in the conference room were fresh in
4 your mind?

5 A No, that's the thing. Nothing was fresh in my mind.

6 Q And I guess it's even more murky now, eight months later.

7 A I didn't say that. I just said it wasn't fresh in my
8 mind.

9 Q Your memory gets better as time gets on?

10 A Well, your recollection --

11 MR. RODRIGUEZ: Objection. This is clearly --

12 JUDGE GIANNASI: Overruled.

13 THE WITNESS: Your recollection things better or some
14 instances stand out. Had I know this was all going to happen,
15 I surely would have taken notes on a daily basis.

16 MR. STUART: Well, we all look back from time to time.

17 JUDGE GIANNASI: No, now don't editorialize.

18 MR. STUART: All right, sorry.

19 BY MR. STUART:

20 Q I take it you had a preparation session before today with
21 the attorneys for the National Labor Relations Board?

22 A Only really this morning, but --

23 Q They prepped you this morning?

24 A It wasn't prep. We just went over what was going to be
25 done, you know, what to expect, the opening statements and --

1 Q I hope they told you I was going to be nice. So this is
2 the affidavit that you gave to the Board on May 2.

3 A Yes.

4 Q All right.

5 JUDGE GIANNASI: Are you going to have -- I mean there was
6 no testimony yet about this meeting that was asked about on
7 cross-examination, right? You're going to put that on through
8 other witnesses?

9 MS. BROWN: Yes, Your Honor.

10 BY MR. STUART:

11 Q During the meeting when you were advised that you were
12 being separated from the company, it's true that there was no
13 mention of unions or unionization?

14 A I mentioned it.

15 Q But there was -- certainly the company representatives
16 didn't agree with you.

17 A She told me she wouldn't talk about it. She wouldn't
18 acknowledge or address it.

19 Q So it wasn't addressed?

20 A Right.

21 Q Okay, thank you.

22 A Yes.

23 Q I have nothing further. Thank you, Mr. Messina.

24 A You are quite welcome, sir.

25 JUDGE GIANNASI: Redirect?

1 MS. BROWN: Yes, I'd just like to clarify.

2 **REDIRECT EXAMINATION**

3 BY MS. BROWN:

4 Q On cross-examination, Mr. Stuart questioned you about a
5 conversation that you had with Phaedra Powell on or about
6 April 16. When you went to talk to Phaedra Powell to tell her
7 about that April 23 meeting, was that before or after Christian
8 Salazar was discharged?

9 A It was after.

10 Q Was it before or after Guillermo Mejia was --

11 A Before.

12 JUDGE GIANNASI: Before you were given the card?

13 BY MS. BROWN:

14 Q Was it before or after he gave you the card?

15 A Before.

16 Q How attentive were you during that meeting with Jason
17 Greer?

18 A Somewhat. I mean like I said, I really had nothing to
19 offer. I hadn't been there long enough to have any valid
20 recommendations on efficiency, you know, I had been barely
21 exposed to much of the operation, at that point.

22 MS. BROWN: Nothing further.

23 MR. STUART: No questions.

24 JUDGE GIANNASI: You're excused.

25 THE WITNESS: Can I wipe that up, Your Honor? Just give

1 me a moment.

2 JUDGE GIANNASI: Sure. Go ahead.

3 **(Witness excused.)**

4 JUDGE GIANNASI: We'll be off the record.

5 **(Discussion off the record.)**

6 JUDGE GIANNASI: Next witness? Next witness?

7 MS. BROWN: We call Michael Dolan.

8 JUDGE GIANNASI: Raise your right hand.

9 (Whereupon,

10 **MICHAEL DOLAN,**

11 was called as a witness by and on behalf of the General Counsel
12 and, after having been duly sworn, was examined and testified
13 as follows:)

14 JUDGE GIANNASI: Be seated, please. Give your name and
15 address to the reporter. And speak up.

16 THE WITNESS: My name is Michael Dolan. My address is
17 6284 --

18 COURT REPORTER: Spell your last name, please.

19 THE WITNESS: Dolan, D-O-L-A-N.

20 COURT REPORTER: What's your address?

21 THE WITNESS: 6284 --

22 COURT REPORTER: Thank you.

23 **DIRECT EXAMINATION**

24 BY MR. RODRIGUEZ:

25 Q And just to let you know, please try to speak up a little

1 bit. It's not a microphone. It's just recording so everybody
2 needs to hear what you're saying.

3 A All right.

4 Q Were you employed by Pratt Corrugated Logistics?

5 A Yes, I was.

6 Q What position did you hold with that company?

7 A I was a driver, pickup and delivery driver.

8 Q When were you first hired -- when were you hired for that
9 position?

10 A The 2nd of February.

11 Q Do you still work there?

12 A No.

13 Q Since when do you not work there?

14 A Since the 27th of April.

15 Q What type of work did you do as a driver for Pratt?

16 A I picked up bales of cardboard and brought them down to
17 Philadelphia. I picked up rolls of cardboard and brought it
18 back to Macungie. And then delivered the finished product to
19 their customers throughout New York and Pennsylvania and some
20 of New Jersey.

21 Q Did you also travel to Staten Island as part of your work?

22 A Yeah, like that's where I picked up the rolls.

23 Q What was at Staten Island?

24 A It was a Pratt facility.

25 Q And while working at Pratt, did an employee ever talk to

1 you about joining a union?

2 A Yes.

3 Q Do you know what date that happened the first time?

4 A I think it was, to the best of my recommendation, I think
5 the 19th of April.

6 Q And who was it that spoke to you?

7 A Chris Salazar.

8 Q And where did the conversation with Chris Salazar occur?

9 A On the company grounds, just outside the dispatch office.

10 Q Was it over the telephone or in person?

11 A First, it was in person, yeah, the first contact was in
12 person.

13 Q What did he tell you?

14 A Just said, you know, he was thinking about seeing if there
15 was any interest in a union and if I'd be, you know, any
16 interest in it.

17 Q Did the subject of a meeting come up during that
18 conversation?

19 A He was just kind of looking into it. And the next contact
20 was he contacted me on Friday, on my cell, and he told me that
21 he was arranging a meeting for the following Monday, the 23rd,
22 and it would possibly be at McDonald's.

23 Q Do you know who Jason Greer is?

24 A Yeah.

25 Q When did you first meet him?

1 A I believe it was the 25th. I think it was Wednesday, the
2 25th.

3 Q Of April?

4 A Yeah, April, yeah.

5 Q Have you ever seen him before that day?

6 A No.

7 Q And where was this? Where did you see him?

8 A When I reported for duty on that same morning, I was
9 instructed to go to the conference room at the other end of the
10 building for a meeting with him.

11 JUDGE GIANNASI: Who instructed you?

12 THE WITNESS: Chris, I forget his second name, the
13 dispatcher.

14 BY MR. RODRIGUEZ:

15 Q And did you, in fact, report to the conference room?

16 A Yeah.

17 Q Who was there?

18 A I went down later than some of the rest. It was Abel,
19 Luis, and Dennis were there.

20 Q Do you know any of their last names? Is it Abel Camilo?

21 A Probably.

22 Q Okay. Luis Hernandez?

23 A Yeah.

24 Q Okay. Dennis Cortez?

25 A Yeah, yeah.

1 Q Anybody from management there?

2 A No.

3 Q There was nobody from management at the conference room?

4 MR. STUART: Asked and answered. Asked and answered.

5 JUDGE GIANNASI: Overruled.

6 THE WITNESS: Jason Greer was there. I don't remember
7 anything else. I got there later.

8 BY MR. RODRIGUEZ:

9 Q So how did the meeting start?

10 A Well, see, I wasn't there at the start of it. I got
11 there, they were already talking. They were already talking
12 about football and sports when I got in there. For a few
13 minutes, that's what the conversation they had.

14 Q Did they move onto a different topic?

15 A Yeah, shortly after I was there, they got into Jason Greer
16 said he was, something to the effect he was hired by the
17 company to see if there's any problems or, I don't know, any
18 problems any drivers might have with the company.

19 Q Did he say anything else?

20 A Well, he said it was an up and coming company and that he
21 knows something to the effect of teething problems, you know,
22 when it's starting and that had quite a few, and he was trying,
23 you know, any problems that the drivers might have, he wanted
24 to get to the bottom of.

25 Q And did drivers bring up any problems?

1 A Yeah, there were a few issues discussed.

2 Q And how did Mr. Greer respond to that?

3 A I don't remember him responding negatively or positively.

4 He just was, you know, taking in and he would just stay it was
5 an up and coming company, and there will be issues that need to
6 be resolved.

7 Q You mentioned before that you were separated from the
8 company on April 27th. Under what circumstances were you
9 separated? Were you fired, laid off, how?

10 A I was in effect laid off, I guess.

11 Q How were you informed that you were getting laid off?

12 A Well, when I came in after doing my run for the day, I was
13 instructed to go to the office.

14 Q Who instructed you to go to the office?

15 A I think it was Chris, when I reported with my paperwork.
16 He said they want to see you in the office. There was somebody
17 else that was seen before. So they called me in afterwards
18 and --

19 Q And what office was that?

20 A It was Phae's office.

21 Q Did you go into her office?

22 A Yes, I did.

23 Q Who was in there, when you went?

24 A Phae was there, Chris, and Erin Cutler.

25 Q And when you say Chris, do you mean Chris the dispatcher?

1 A Yeah.

2 JUDGE GIANNASI: What is his last name?

3 MS. BROWN: Westgate.

4 JUDGE GIANNASI: Is he named in the complaint?

5 MS. BROWN: No, sir.

6 BY MR. RODRIGUEZ:

7 Q How long did the meeting last?

8 A It was pretty short. I think it kind of opened with, I
9 remember Erin saying, sorry, we're going to have to lay you
10 off.

11 Q Okay. Did she say why?

12 A I think Phae chimed in at this point saying we're doing,
13 you know, because we're not getting the runs done. She picked
14 up a stack of runs, paperwork for runs, saying we're not
15 getting this done fast enough and that they're going to make
16 changes.

17 Q Did anybody say anything else?

18 A Well, I said are you sure that's the real reason why. And
19 Erin kind of cut in with that's what we've been instructed to
20 do from corporate or something to that effect.

21 Q And what was said next?

22 A She gave me a paper to sign.

23 Q Who gave you a paper to sign?

24 A Erin. Kind of a severance paper and asked me if I would
25 like to sign it. I said I'd look it over and take a good look.

1 Q Did anybody say anything during the meeting about
2 unemployment?

3 A What do you mean?

4 Q Did anybody say anything about unemployment insurance or
5 compensation?

6 JUDGE GIANNASI: You'll have to speak up. The reporter
7 has to hear what your answer is.

8 THE WITNESS: No. Sorry.

9 BY MR. RODRIGUEZ:

10 Q And outside the facility where you worked in Macungie,
11 were there any signs outside the building identifying what the
12 building was?

13 A Yeah, there had been a sign with Pratt Logistics or Pratt
14 Industries on it, something like that.

15 Q Okay.

16 MR. RODRIGUEZ: No further questions, Your Honor.

17 JUDGE GIANNASI: Cross?

18 MR. STUART: Yes. At this point, Your Honor, we'd request
19 any and all affidavits furnished by Mr. Dolan to the National
20 Labor Relations Board.

21 MR. RODRIGUEZ: Your Honor, I'm handing Respondents a
22 five-page affidavit.

23 MR. STUART: Thank you.

24 JUDGE GIANNASI: We'll be off the record.

25 **(Discussion off the record.)**

1 JUDGE GIANNASI: On the record.

2 **CROSS-EXAMINATION**

3 BY MR. STUART:

4 Q Mr. Dolan, hello. How are you, sir?

5 A How are you.

6 Q Right. My name is Eric Stuart and I represent Corrugated
7 Logistics. I just have a couple of questions for you with
8 regards to your testimony. When you were hired by the company,
9 you were interviewed by Phaedra Powell?

10 A Yeah.

11 Q And you know her also as Phae?

12 A Yeah.

13 Q And she supervises the trucking operation that you were
14 involved in?

15 A Yes.

16 Q And she supervises the drivers, correct?

17 A Yeah.

18 JUDGE GIANNASI: Speak up.

19 THE WITNESS: I think I am and I don't.

20 BY MR. STUART:

21 Q The court reporter relies on the microphone. So if it's
22 not clear and he hears it, too, if it's not clear then he
23 has --

24 A Well, to me it louder than maybe it is to you, I don't
25 know.

1 Q Well, everyone has their own, their own volume.

2 A Okay.

3 Q You testified about an interaction that you had with
4 Christian Salazar, one of the drivers for the company, in which
5 he asked you if you were interested in the union. That was,
6 you testified, April 19th.

7 A Yeah, it was around there. I think it was the 19th, yeah.

8 Q Okay, that's fine. That conversation took place after
9 work hours, correct?

10 A Yeah.

11 Q And it was outside the building in Macungie?

12 A Yeah.

13 Q Right? It was out in the open air, right?

14 A Yeah.

15 Q It wasn't inside.

16 A No, it wasn't inside.

17 Q It was outside, after work.

18 A Yeah.

19 Q Okay, thanks. And I want to direct your attention to the
20 meeting with Jason Greer. So you know that the person you were
21 speaking with in a meeting on April 25 named Jason or Jay
22 Greer, correct?

23 A Yeah.

24 Q And you knew that back on May 4, when you gave your
25 affidavit to the National Labor Relations Board? Jay Greer,

1 the name Greer?

2 A I don't know at what point I knew he was Jay Greer, but I
3 know him now as Jay Greer.

4 Q Okay. Well, let me just show you your affidavit.

5 A I know his name was Jay or Jason.

6 Q I'm going to show you your affidavit that you provided to
7 the National Labor Relations Board just in an abundance of
8 caution. That is your signature on the affidavit?

9 A Yes.

10 Q Michael Dolan?

11 A Looks like it, yes. Look like it, yeah.

12 Q Okay. So I'm going to show you Page 3. And I am just
13 marking a section for you. It starts with A-N-N. And could
14 you just read that aloud, please, into the record? Just read
15 it right out.

16 A Okay. An African-American man named Jay Greer conducted
17 the meeting.

18 Q Okay, thank you. So on May 4, when you gave your
19 affidavit to the National Labor Relations Board, you knew that
20 this African-American gentleman was named Jay Greer, G-R-E-E-R,
21 correct?

22 A Yeah, I think so.

23 Q Okay, thank you. Now in that meeting, Mr. Greer was
24 discussing things that could be done to make the company run
25 more efficiently and productively, correct?

1 A I forget what terminology he used, but I think it was
2 more, if I remember, he was saying it was an up and coming
3 company, and there was some things that need to be ironed out.
4 And he said he was here to see what, you know, what he could
5 pull from drivers to make this happen. I don't know what the
6 terminology he used.

7 Q Okay. And he told you that it was a start-up operation,
8 correct?

9 A Yeah, something to that effect. It was an up and coming
10 company, yeah.

11 Q Okay. And it is true, Mr. Dolan, that he didn't say what
12 if anything he could do to do about any of these problems,
13 correct?

14 A I don't know that he said that there was anything he could
15 do. He was just there to see what grievances we might have
16 with the company.

17 Q Okay. I'm going to show you your affidavit again, if
18 that's okay, sir. I've marked a section at the bottom of
19 Page 3. Now I'm just going to ask you just to read it aloud.

20 A Okay. Greer did not say what if anything the company
21 would do about the problems we mentioned.

22 Q Okay. So when you gave this statement to the National
23 Labor Relations Board on May 4th, it was your truthful
24 statement at that time?

25 A Yes, as best I can remember.

1 Q Your accurate statement?

2 A Yes, best I can remember.

3 Q That you knew that the National Labor Relations Board
4 would be relying on, is that correct, sir?

5 A Yeah.

6 Q Okay, thank you. Oh, one other question about the meeting
7 with Mr. Greer, there was nothing said in that meeting about
8 the Teamsters or any union, correct?

9 A No, I don't remember that was brought up, no.

10 Q Okay. Mr. Dolan, you started with the company in February
11 of 2012, right?

12 A Yeah.

13 Q Beginning of February. And during your employment with
14 the company, you were aware that Corrugated Logistics used
15 outside carriers, right?

16 A When I was -- they had started off using them, but they
17 were trying to downgrade them. They weren't really, like I
18 understood it wasn't, I don't hardly remember any being used.

19 Q So you're -- when --

20 A It had started, all I know that started off using outside
21 carriers and they were trying to get in the company drivers.

22 Q In February, they were using outside carriers. Is that
23 your testimony, sir?

24 A To a small extent, if I can remember right. I don't
25 remember seeing too many outside carriers --

1 Q I take it that --

2 A Like doing the work that we were doing.

3 Q I take it that as a driver there was a good deal of time
4 that you spent away from the facility, is that correct,
5 driving?

6 A Yeah.

7 Q Okay, thank you.

8 MR. STUART: Thank you. Nothing further.

9 JUDGE GIANNASI: Any redirect?

10 MR. RODRIGUEZ: Nothing further, Your Honor.

11 JUDGE GIANNASI: Thank you. You're excused.

12 **(Witness excused.)**

13 JUDGE GIANNASI: Next?

14 MS. BROWN: We call Zsolt Harskuti.

15 JUDGE GIANNASI: You know you don't have to use all of the
16 witnesses that you have.

17 MS. BROWN: I will -- I'm going to try to call them and
18 limit them, limit the scope just to the points, Your Honor.
19 I'll try to get them on and off.

20 MR. STUART: Your Honor, am I to understand that all the
21 witnesses are comingling with each other?

22 UNIDENTIFIED SPEAKER: Absolutely.

23 MR. STUART: Chit-chatting, I mean --

24 UNIDENTIFIED SPEAKER: They've all been going back to that
25 room and talking in that room and talking about how it went in

1 here. I heard when I was in the restroom.

2 JUDGE GIANNASI: I just want to make clear what the
3 sequestration rule is. I have applied a rule, it's a very
4 technical rule that lawyers understand. Basically, it says
5 that you cannot be in the hearing room while other people are
6 testifying. But it also means when you have finished
7 testifying you can't go in and talk to potential witnesses and
8 tell them what you said in here.

9 Now I have relied on the lawyers to make this clear to
10 you. And if you have any questions, talk to Ms. Brown about
11 this. But I don't want anybody telling any potential witnesses
12 about what you testified in here. As a matter of fact, I don't
13 want you in the same room. You should be in a separate room
14 when you're finished --

15 MS. BROWN: They have separate rooms.

16 JUDGE GIANNASI: Well, when you finish testifying. All
17 right. As you were.

18 MR. STUART: Thank you, Your Honor.

19 JUDGE GIANNASI: Raise your right hand, please.

20 (Whereupon,

21 **ZSOLD HASKUTI,**

22 was called as a witness by and on behalf of the General Counsel
23 and, after having been duly sworn, was examined and testified
24 as follows:)

25 JUDGE GIANNASI: Be seated, please.

1 THE WITNESS: Thank you.

2 JUDGE GIANNASI: Give your name and address to the
3 reporter and speak up.

4 THE WITNESS: Zsolt Harskuti, Z-S-O-L-T.

5 COURT REPORTER: H-A-S-K-U-T-I?

6 THE WITNESS: Yes.

7 COURT REPORTER: And your address? Just speak.

8 JUDGE GIANNASI: Speak your address.

9 THE WITNESS: 401 Edgewood Drive, Telford, PA, 18969.

10 **DIRECT EXAMINATION**

11 BY MS. BROWN:

12 Q Mr. Harskuti, did you work for a company known as Pratt
13 Corrugated Logistics?

14 A Yes.

15 Q What was your job classification?

16 A Truck driver.

17 Q When did you work there?

18 A I started in February 8, 2012.

19 Q And who did you report to?

20 A Phaedra Powers (sic).

21 Q What hours did you work?

22 A I started time at 7:00 in the morning, whenever the man
23 said, sometimes I worked 14 hours, sometimes 10, it all
24 depended.

25 Q And what kind of runs or assignments were you given?

- 1 A What kind of runs? Basically, New York, New Jersey.
- 2 Q To other Pratt facilities?
- 3 A Yes, other Pratt facilities and their customers.
- 4 Q Did you ever discover any damage to any trucks when you
- 5 worked at Pratt?
- 6 A No, ma'am.
- 7 Q After you were first hired, did anybody talk to you about
- 8 the union?
- 9 A Yes.
- 10 Q Who?
- 11 A Chris Salazar.
- 12 Q Do you remember when that was?
- 13 A It was around April 23rd, I think.
- 14 Q Did he talk to you about going to a union meeting?
- 15 A Yes.
- 16 Q And was that meeting on April 23rd?
- 17 A Yes.
- 18 Q And you went to the meeting?
- 19 A Yes.
- 20 Q Did you ever meet with an employee relations consultant
- 21 named Jay?
- 22 A Yes.
- 23 Q When was that?
- 24 A That was the 24th of April, I believe.
- 25 Q And how did you come to meet with Jay?

1 A We were told by Erin Cutler and Phaedra Powers that there
2 is somebody, an employee relations consultant that wants to
3 talk to us about the company.

4 Q And who was present when you met with Jay?

5 A Who was present? Mike Messino (sic), Jay Lohrman, myself.
6 Erin was in a little bit, but then she left.

7 Q Can you tell us what happened? What did Jay say to you
8 during the meeting?

9 A Well, Jay introduced himself as Jay, as an employee
10 relations consultant, and that he mentioned that it's a
11 start-up company and if we would have any suggestions or
12 complaints that we would like to see changes and what if we do,
13 basically.

14 Q And did you -- I'm sorry, did you have any suggestions or
15 complaints?

16 A Yeah, a couple of us noticed that, there was another
17 driver that went to report everything and anything about us to
18 Phaedra's office.

19 Q So you complained about another driver?

20 A Excuse me?

21 Q You complained about another, about a co-worker?

22 A He complain a lot of us, yes. That was constant
23 reportings to Phaedra as to whatever he could get us.

24 Q Who were you complaining about?

25 A Who was he complaining?

1 Q Who were you complaining about?

2 A Oh, we were talking about Steve West.

3 Q Okay. Any other complaints?

4 A No.

5 Q Okay. And what if anything did Jay say in response to
6 your suggestions and complaints?

7 A He said that we have to be patient because since it's a
8 start-up company, it can happen anywhere, and we will see
9 changes real soon.

10 Q Do you remember anything else from the meeting?

11 A No.

12 Q How long did it last?

13 A Oh, about half hour, 40 minutes.

14 Q Did you go to work on Friday, April 27th?

15 A Yes.

16 Q And what happened when you returned to the facility after
17 your run?

18 A Well, Phaedra and Erin called a meeting for myself, Dennis
19 Cortez, and we were told that since they can't ship the orders
20 out fast enough, they're going to do away with the inside
21 drivers and they're going to hire outside contractors, and we
22 would get a severance package or a severance check, and a
23 letter of recommendation, because even though we didn't do
24 nothing wrong, they can't go on with the inside drivers, they
25 need to hire somebody else to do it faster, basically.

1 Q When you were hired, did anyone tell you that the job was
2 temporary?

3 A No.

4 Q At any time before April 27th, did anyone tell you that
5 the Employer was considering laying off the drivers?

6 A No.

7 Q At any time before you were let go on April 27th, did
8 anyone tell you that the Employer was considering using more
9 outsiders, third-party carriers?

10 A No.

11 Q Thank you. Nothing further.

12 A Thank you.

13 MR. STUART: Your Honor, could we request affidavits, all
14 of them provided by this witness to the National Labor
15 Relations Board? Thank you.

16 MR. RODRIGUEZ: I'm handing Respondents a three-page
17 affidavit.

18 JUDGE GIANNASI: All right, we'll be off the record.

19 **(Discussion off the record.)**

20 JUDGE GIANNASI: On the record.

21 **CROSS-EXAMINATION**

22 BY MR. STUART:

23 Q Mr. Harskuti, am I pronouncing that correctly?

24 A Yeah.

25 Q How are you, today?

1 A Not bad. How are you?

2 Q I'm well, thank you. My name is Eric Stuart and I
3 represent Pratt Corrugated Logistics in this proceeding. I
4 just have a few questions for you about your testimony. You
5 were hired by Phaedra Powell, is that correct?

6 A Yes.

7 Q And you're a professional CDL driver?

8 A Yes.

9 Q And Phaedra Powell supervised the drivers while you were
10 there working at Pratt Corrugated Logistics?

11 A Yes.

12 Q I just want to talk to you about the meeting that you
13 attended in the conference room with Mr. Greer.

14 A Yes.

15 Q Do you know who Jay Greer is?

16 A Yes.

17 Q He's the person that was there?

18 A Yeah.

19 Q The employee relations consultant.

20 A Yeah.

21 Q That's what he told you.

22 A Um-hum.

23 Q About a half an hour meeting?

24 A Something like that.

25 Q All right. And did he ask you for suggestions on

1 efficiency and productivity? You don't -- don't look there.

2 You can look at me.

3 A Efficiency and productivity?

4 Q Yes. And how to better perform the work more efficiently
5 and productively.

6 A No, not that I recall, no.

7 Q Okay. Your testimony was that you were complaining about
8 Steven West?

9 A Yeah.

10 Q You were complaining about Steven West?

11 A Yes.

12 Q Okay. And that's what you said to Mr. Greer?

13 A Yes.

14 Q I'm going to show you your affidavit that you gave to the
15 National Labor Relations Board on May 4. And first, just
16 because I make mistakes, too, just ask you if that's your
17 signature?

18 A Yes, sir.

19 Q Okay. And I made a mark next to a sentence and I'd just
20 like you to read it out loud. And it has to do with the
21 April 24 meeting.

22 A Okay.

23 Q So just read it right out loud into the record, start --

24 A I didn't say any name, that's true. I didn't say any
25 name, but we were talking about Steve West.

- 1 Q Okay, thank you. Yes. So it's correct that when you were
2 having these conversations, you didn't say any name?
- 3 A No.
- 4 Q So this was correct?
- 5 A Yeah.
- 6 Q All right. Just one more question, Mr. Harskuti.
- 7 A Yeah.
- 8 Q When you were hired by Corrugated Logistics, you had a
9 90-day probationary period, is that correct?
- 10 A I believe so, yes.
- 11 Q Okay, thank you very much.
- 12 A I'm not 100 percent, but I believe so.
- 13 Q Probationary period, you --
- 14 A Um-hum.
- 15 Q -- were aware of that, right? Just one other question.
16 Did you discuss your testimony today with anyone?
- 17 A No, I didn't talk to anybody.
- 18 Q Did you come earlier today and meet with the attorneys
19 from the National Labor Relations Board?
- 20 A We briefly met, yes.
- 21 Q All right. So I don't want to know what you discussed
22 with them. Were you sitting in the room in the back there with
23 the other witnesses?
- 24 A Yeah, I fell asleep.
- 25 Q You did?

1 A Yeah, I'm on cold medication. I have a very bad cold.

2 Q Did you fall asleep during the meeting with Mr. Greer?

3 A No.

4 Q You were awake through that, the whole 30 minutes?

5 A Yes, sir.

6 Q All right, you're sure?

7 A I wasn't sick then.

8 Q Okay, good. Well, thanks a lot for coming.

9 A Thank you.

10 JUDGE GIANNASI: Do you have anything else?

11 MS. BROWN: No.

12 JUDGE GIANNASI: You're excused.

13 **(Witness excused.)**

14 MS. BROWN: We call Jay Lohrman.

15 (Whereupon,

16 **JAY LOHRMAN,**

17 was called as a witness by and on behalf of the General Counsel
18 and, after having been duly sworn, was examined and testified
19 as follows:)

20 JUDGE GIANNASI: Be seated, please. Give your name and
21 address to the reporter.

22 THE WITNESS: My name is Jay, J-A-Y, I use the middle
23 initial R, last name Lohrman, L-O-H-R-M-A-N.

24 COURT REPORTER: Thank you.

25 **DIRECT EXAMINATION**

1 BY MS. BROWN:

2 Q Mr. Lohrman, do you work for a company known as Pratt
3 Corrugated Logistics?

4 A Yes, I do.

5 Q What's your job classification?

6 A Truck driver.

7 Q And when did you first start working there?

8 A I believe it was the 27th of November, of 2011.

9 Q And when you first started working, were you given an
10 employee handbook?

11 A Yes, I was.

12 Q Who gave it to you?

13 A Phaedra Powell.

14 JUDGE GIANNASI: This is different than what's in
15 evidence?

16 MS. BROWN: Yes, Your Honor.

17 **(General Counsel Exhibit 18 marked for identification.)**

18 BY MS. BROWN:

19 Q I'm showing you what's been marked as General Counsel's
20 Exhibit 18. Would you take a look at that, please? Do you
21 recognize that, Mr. Lohrman?

22 A Yes.

23 Q Okay. And what is it?

24 A The request for family and medical leave.

25 Q No, I'm sorry, the entire document.

1 A Oh, okay. It's the employee handbook I was given when I
2 started.

3 Q Okay. And is this a document that you gave to me?

4 A Yes.

5 MS. BROWN: I'd like to offer General Counsel's Exhibit 18
6 into evidence, please.

7 MR. STUART: No objection.

8 JUDGE GIANNASI: Received.

9 **(General Counsel Exhibit 18 received into evidence.)**

10 JUDGE GIANNASI: Is this the one that has the --

11 MS. BROWN: No, Your Honor.

12 JUDGE GIANNASI: The alleged unlawful rule?

13 MS. BROWN: No, that's coming. That's coming.

14 BY MS. BROWN:

15 Q Mr. Lohrman, did you ever talk to Phaedra Powell about the
16 Employer's plan for hiring drivers?

17 A Yes.

18 Q When did you talk to her?

19 A It was towards the beginning of my employment. There was
20 only a few of us there, at that point. And a couple of friends
21 of mine had, you know, they're looking for work and had asked
22 me if we would be hiring any more drivers. And I said, well,
23 according to Phae, yeah, we'd be hiring she said between 25 and
24 30 drivers would be hired.

25 MR. STUART: Objection. This is a conversation he had

1 with his friends.

2 JUDGE GIANNASI: We want the conversation you had with
3 Phaedra.

4 THE WITNESS: Oh, I'm sorry. Okay. Well, yes, at one
5 point she told me that Pratt was going to hire 25 to 30 company
6 drivers.

7 BY MS. BROWN:

8 Q During your employment at Pratt -- when was the first time
9 you talked to a co-worker about the union?

10 A Steve West had approached me in an angry state.

11 Q Okay, when was that?

12 A I want to say in the middle of April sometime.

13 Q Okay. And would you describe your conversation with Mr.
14 West?

15 A I was coming out the door of the office and he approached
16 me. And he was angry. And he said something to the effect of
17 Chris wants to get a union in here.

18 Q Did he say anything else?

19 A He said he was very upset about it. He didn't like
20 unions. And at that point, and he said he was going to go to
21 Phae about it.

22 Q Did you ever talk to Christian Salazar about the union?

23 A Yes.

24 Q And when was that?

25 A It was maybe a week later.

1 Q Did you ever meet with someone named Jay, at the company?

2 A Yes.

3 Q Okay. And when was that?

4 A I believe that was, I think it was on the 23rd or 24th of
5 April. We were instructed in the morning when we -- when I
6 came into work, you go to the dispatch window. And at that
7 point, I was instructed to go down to Erin Cutler's office.
8 And that was really all I was told, at that point. And then we
9 checked in with the receptionist, Angie, and she said that
10 we're going to have a meeting and to go into a designated room
11 for that meeting.

12 Q And when you went to the room, who was there?

13 A I went into the room with two other drivers. And there
14 was a man there named, he called himself Jay, same as myself.

15 Q What did you say? What happened during the meeting?

16 A He said that he was hired by Pratt. He was a consultant.
17 And he said the company was interested in finding out any
18 problems with the, the opening of the company or with that
19 location.

20 Q And did you or any of the other drivers talk about
21 problems?

22 A Yes, we did.

23 Q Okay. What was Jay's response, if any?

24 A Well, he had -- as we were talking, he said that some
25 Pratt locations had a very smooth opening and he said other

1 ones were rocky. He said that this one was off to a rocky
2 start and he knew that there was problems there. Do you want
3 me to continue?

4 Q Yes, please.

5 A Okay. At some point in the conversation, he came right
6 out and said that he was in the dispatch office and that he
7 could see that Phaedra was overwhelmed by the position. And we
8 all agreed.

9 Q Do you recall anything else?

10 A Well, let's see. I remember him saying that Mr. Pratt had
11 really cared for his employees. And that there were problems
12 there and there would be changes. And that sounded positive to
13 me, at that point.

14 Q Now did he introduce himself to you as Jason Greer?

15 A No.

16 Q How did he introduce himself?

17 A He introduced himself as first name Jay. He said that he
18 was proud of the fact that he played some football for
19 Valparaiso.

20 Q What's Valparaiso?

21 A It's a college in Indiana.

22 Q Okay. And after the meeting with him, did you do anything
23 to find out who this person was, anything further?

24 A Well, initially, I had asked him -- he said, he had said
25 in the conversation that if there was anything else we wanted

1 to add to what we had talked about that we could be in contact
2 with him, although he wouldn't be in town until -- he'd only be
3 in town until Friday. And I asked him for his cell phone
4 number, if I could call him. And he said absolutely not, you
5 know, I couldn't have his cell phone number. I don't know if
6 it was myself or someone else that did ask his last name and he
7 declined to give us his last name.

8 Q So how did you find out that his name was Jason Greer?

9 A I did an internet search first on Valparaiso football to
10 try to find his name. And then I did a Google. And this was,
11 of course, after we were laid off. I did a Google on, oh,
12 sorry, I forgot to shut it off. I did a Google on union
13 busters. And much to my surprise, when I did find a site there
14 and went to that site, his picture popped up and clearly said
15 union buster right across the top of it.

16 **(General Counsel Exhibit 19 marked for identification.)**

17 BY MS. BROWN:

18 Q I'm showing you what's been marked as -- showing you
19 what's been marked as General Counsel's Exhibit 19. Do you
20 recognize that?

21 A Yes, I do.

22 Q Okay. What is it?

23 A It looks like the printout from his internet site, on one
24 of the, one of the pictured advertisements.

25 Q And this is the man that you met with, Jason Greer?

1 A Yes, it is.

2 MS. BROWN: I'd like to offer General Counsel's Exhibit 19
3 into evidence.

4 MR. STUART: Could I ask the witness a few questions about
5 this document?

6 **VOIR DIRE EXAMINATION**

7 BY MR. STUART:

8 Q Mr. Lohrman, when did you print this out?

9 A I did not print it out.

10 Q Who did?

11 A I have no idea.

12 Q When was the first time you've seen it?

13 A On the internet, on my laptop.

14 Q And is this what you're saying is you did a Google search
15 for union buster and there was something that said union buster
16 across it?

17 A Yeah.

18 Q And this is what you say -- where does it say union
19 buster?

20 MS. BROWN: This is not the document.

21 THE WITNESS: This is not, I mean there was, there was
22 many different screens on that. This is one of the screens
23 that I saw, not the first one that I saw.

24 BY MR. STUART:

25 Q And when did you see it? You said after you were laid

1 off?

2 A After, right, on that weekend after that.

3 Q Do you see the handwriting in the upper left-hand corner
4 that says Jason Greer?

5 A Um-hum.

6 Q Is that your handwriting?

7 A No.

8 Q Okay.

9 MR. STUART: Your Honor, there is no -- I don't know what
10 purpose that this is being introduced for, but there is no
11 indication that this has come from a website or where it was
12 obtained. And the witness --

13 JUDGE GIANNASI: Well, there is his testimony.

14 THE WITNESS: I saw it on the website.

15 BY MR. STUART:

16 Q What website?

17 A On his website, Jason --

18 JUDGE GIANNASI: Don't argue with the witness.

19 MR. STUART: I'm not. I'm just trying --

20 JUDGE GIANNASI: You're objecting. And I'm overruling
21 your objection.

22 MR. STUART: All right, thank you, Your Honor.

23 JUDGE GIANNASI: Received.

24 **(General Counsel Exhibit 19 received into evidence.)**

25 **CONTINUED DIRECT EXAMINATION**

1 BY MS. BROWN:

2 Q Did you go to work on April 27th?

3 A Yes.

4 Q And what if anything unusual happened that day?

5 A Well, on that day, I was called in with two other drivers
6 to Phaedra Powell's office. And Erin Cutler and Christian
7 Westgate were present, at that time. And Erin Cutler took the
8 lead there and talked to us three drivers that were there, and
9 told us that we were being laid off.

10 Q Did she say why?

11 A She said that they were going to outside carriers to do
12 our job.

13 Q Okay. Were you offered a severance agreement?

14 A Yes.

15 Q And a letter of recommendation? Did she offer to write
16 you a letter of recommendation?

17 A Yes.

18 **(General Counsel Exhibit 20 marked for identification.)**

19 BY MS. BROWN:

20 Q I'm showing you what's been marked as General Counsel's
21 Exhibit 20. Take a look at that, please. And what is that?

22 A This is the termination/severance agreement that they
23 offered me, at that time.

24 MS. BROWN: I'd like to offer General Counsel's Exhibit 20
25 into evidence.

1 MR. STUART: No objection.

2 JUDGE GIANNASI: Received.

3 **(General Counsel Exhibit 20 received into evidence.)**

4 BY MS. BROWN:

5 Q Mr. Lohrman, at the time of your discharge, was the
6 company still using outside carriers?

7 A Only for overnight runs.

8 Q And how many drivers did the company have, at that time?

9 A I believe it was 19.

10 Q Do you know Wayne Webb?

11 A Yes.

12 Q Do you know if he knew Phaedra Powell before he started
13 working for Pratt?

14 MR. STUART: Objection. How would this witness know what
15 someone else knows about something in their past?

16 JUDGE GIANNASI: I mean if he knows.

17 BY MS. BROWN:

18 Q Do you know if they knew each other before he came to
19 Pratt?

20 MR. STUART: No foundation.

21 THE WITNESS: He told me that.

22 MR. STUART: Hearsay.

23 JUDGE GIANNASI: That is hearsay. I don't know where you
24 are going.

25 MS. BROWN: Okay. I'll move forward. Actually, I have

1 nothing further.

2 JUDGE GIANNASI: All right.

3 MS. BROWN: Thank you.

4 MR. STUART: Your Honor, I would ask for any affidavits
5 provided by Mr. Lohrman.

6 THE WITNESS: Am I excused?

7 JUDGE GIANNASI: No, you are not, sir. Now they're going
8 to have at you.

9 MS. BROWN: Five pages.

10 JUDGE GIANNASI: Both sides get to question you.

11 MS. BROWN: Let the record show I'm turning over a
12 five-page affidavit of Jay Lohrman.

13 JUDGE GIANNASI: Off the record.

14 **(Discussion off the record.)**

15 JUDGE GIANNASI: On the record. Cross?

16 **CROSS-EXAMINATION**

17 BY MR. STUART:

18 Q Good afternoon, Mr. Lohrman. How are you?

19 A Okay.

20 Q My name is Eric Stuart and I represent Pratt Corrugated
21 Logistics. I just have a few questions for you about your
22 testimony. You said that you looked at a website that was
23 sponsored by Jason Greer and that it said something like union
24 busting, is that correct?

25 A That's correct.

1 Q You also recall it saying that Mr. Greer is a former agent
2 of the National Labor Relations Board; that he assists
3 companies in their labor relations, and he does employment
4 consulting. Did you remember reading that piece of the
5 website?

6 A Right.

7 Q Okay. Phaedra Powell was your supervisor?

8 A Yes.

9 Q Is that correct? Yes, thank you. You testified that Ms.
10 Powell told you about the company's intention to hire
11 additional drivers. And you said upwards of 20 or even 30.

12 A Yes.

13 Q And that conversation occurred back when you were hired in
14 November of 2011, is that correct?

15 A No, I don't think it was November, because that was my
16 first week there and it was after that. I would say probably
17 closer to Christmas.

18 Q When were you interviewed?

19 A Pardon me?

20 Q You were interviewed for your job sometime in November of
21 2011, correct?

22 A Right.

23 Q All right. So let me show you your affidavit that you
24 gave to the National Labor Relations Board. And in your case,
25 it was May 4th.

1 MR. STUART: Your Honor, may I approach?

2 JUDGE GIANNASI: Yes.

3 BY MR. STUART:

4 Q I'm going to ask you if that's your signature.

5 A Yes.

6 Q Okay. I'm going to just mark a section for you. Just
7 read it out into the record, starts with when.

8 A When I was interviewed, Powell told me that the plan was
9 to hire 25 to 30 company drivers.

10 Q Okay. So does that refresh your recollection as to when
11 that conversation occurred about?

12 A I, I recall hearing that on more than one occasion.

13 JUDGE GIANNASI: You've got to turn that off.

14 THE WITNESS: Yes, sir, I'm trying. I'm sorry. I thought
15 I had it off.

16 BY MR. STUART:

17 Q That's an interesting ringtone.

18 A I'm sorry.

19 Q When you gave your affidavit to the National Labor
20 Relations Board --

21 A Yes.

22 Q You referenced one conversation about the company's plan
23 to hire drivers occurring when you were interviewed in
24 November, correct?

25 A Okay.

1 Q That's correct?

2 A Yes.

3 Q You didn't mention about other conversations about hiring
4 plans. There's nothing in here about any other conversation
5 about hiring plans.

6 A Okay.

7 Q Correct me if I'm wrong, but the board agent who took the
8 affidavit told you to give an accurate and truthful affidavit,
9 correct?

10 A Um-hum.

11 Q And you tried to do that to the best of your ability.

12 A To the best of my ability, yes.

13 Q All right, thank you. I want to talk about the meeting
14 with Jay on April 24. How long did the meeting last?

15 A About an hour, hour and a half.

16 Q Hour or hour and a half?

17 A Um-hum.

18 Q When you gave your affidavit to the National Labor
19 Relations Board, you said it was about an hour. Could that be
20 correct, about an hour?

21 A About an hour.

22 Q Not an hour and a half, an hour?

23 A Could have been an hour and a quarter.

24 Q So when you gave this affidavit, were you just trying to
25 be like pretty correct or --

1 MS. BROWN: Objection.

2 BY MR. STUART:

3 Q Were you trying to be accurate and truthful to the best of
4 your ability or were you just trying to come close? What was
5 your understanding --

6 MS. BROWN: Objection. Asked and answered.

7 MR. STUART: -- of the affidavit?

8 MS. BROWN: It's already been asked and --

9 JUDGE GIANNASI: No.

10 THE WITNESS: The best of my ability.

11 BY MR. STUART:

12 Q And the best of your ability at that time was that it was
13 a one-hour meeting. That was your recommendation on May 4.

14 A Does it say about an hour?

15 Q About an hour.

16 A There you go.

17 Q So to you about an hour could be an hour and a half?

18 JUDGE GIANNASI: Don't argue with the witness. You have
19 everything in the record that you need.

20 MR. STUART: Thank you, Your Honor. I apologize.

21 BY MR. STUART:

22 Q And I apologize to you, Mr. Lohrman. The meeting with
23 Jay, he gave his opinion that Ms. Powell was overwhelmed with
24 her responsibilities as logistics manager.

25 A Yes.

1 Q And you agreed with that?

2 A Yes.

3 Q And everyone in the room agreed with that?

4 A Yes.

5 Q What did everyone -- what did you understand overwhelmed
6 to mean? Why was she overwhelmed?

7 A Because she was under qualified for the position.

8 JUDGE GIANNASI: Well, did he say that?

9 THE WITNESS: He, yes, he said that in a statement.

10 BY MR. STUART:

11 Q And you agreed with that?

12 A He was looking for us to agree with that, I believe.

13 Q And you agreed with it?

14 A Yes, I did.

15 Q And everyone in the room agreed with it?

16 A As far as I know.

17 Q And why did you agree with it?

18 A Well, she had exhibited or, say, not exhibited skills to
19 be qualified for the position.

20 JUDGE GIANNASI: You know his opinion, I'm not interested
21 in his opinion. I'm interested in what was said, but I'm not
22 interested in his opinion.

23 MR. STUART: Your Honor, could I make the argument outside
24 the hearing of the witness?

25 JUDGE GIANNASI: No. No, I'm not interested in this area.

1 I'm interested in what was said, not in his thought processes.

2 BY MR. STUART:

3 Q In your experience in working for the company, starting in
4 November, did Ms. Powell not effectively manage you as a driver
5 to efficiently operate the logistics operation?

6 JUDGE GIANNASI: I'm not going into this.

7 MS. BROWN: Objection, relevance.

8 JUDGE GIANNASI: This is irrelevant.

9 MR. STUART: If I could be given some leeway?

10 JUDGE GIANNASI: No. I'm interested in what was said, not
11 in his opinion. I've said that several times now. You've got
12 to move on.

13 MR. STUART: I understand. There is another aspect to the
14 case, Judge, other than what was said at that meeting. It's
15 all intertwined.

16 JUDGE GIANNASI: I just don't see it.

17 MR. STUART: All right, thank you, Your Honor.

18 BY MR. STUART:

19 Q Nothing was said at the meeting by Jay about unions or
20 unionization, correct?

21 A He did not say anything.

22 Q I'm going to show you a couple of documents, Mr. Lohrman,
23 and then you'll be done.

24 MR. RODRIGUEZ: This is R-2?

25 MR. STUART: It will be whatever the reporter says that it

1 is.

2 COURT REPORTER: Exhibit 2.

3 **(Respondent Exhibit 2 marked for identification.)**

4 MR. STUART: Your Honor, just if I could interrupt for one
5 second, R-1 was the signature page. I thought we had
6 introduced as well the -- they're both R-1?

7 MS. BROWN: They're both R-1?

8 JUDGE GIANNASI: That is attached.

9 MR. STUART: Okay, I'm sorry. Thank you.

10 JUDGE GIANNASI: Or should be attached.

11 COURT REPORTER: It's attached here, but it's not --

12 MR. STUART: I understand. Okay, I apologize.

13 JUDGE GIANNASI: That is all Respondent's Exhibit 1.

14 UNIDENTIFIED SPEAKER: Okay. We'll correct that at the
15 end.

16 COURT REPORTER: I need it back.

17 UNIDENTIFIED SPEAKER: Yeah, we'll get you that.

18 BY MR. STUART:

19 Q Mr. Lohrman, I'm going to show you what's been marked as
20 Respondent's Exhibit 2. You can hold it. I'm going to ask you
21 if that is your signature on the document where it says
22 signature of employee?

23 A Yes.

24 Q And you signed that in February 28 of 2012?

25 A Yes.

1 Q Okay, thank you. And, oh, by the way, those are your
2 handwritten comments written in where it says employee
3 comments?

4 A Yes.

5 Q And this was presented to you by your supervisor, Phaedra
6 Powell?

7 A Yes.

8 Q Okay.

9 JUDGE GIANNASI: Well, are you introducing that document?

10 MR. STUART: I wouldn't introduce it through this witness.
11 I was going to put it in, in our direct case. Your Honor, I'll
12 move for the introduction of Respondent 2.

13 JUDGE GIANNASI: I don't know what it is and what's the
14 relevance?

15 MR. STUART: It is discipline issued to Mr. Lohrman that
16 he signed and commented on.

17 JUDGE GIANNASI: Well, what's the relevance?

18 MR. STUART: The relevance will be that drivers were
19 selected for layoff and we'll have testimony that will explain
20 that in terms of the process.

21 JUDGE GIANNASI: I thought your defense was an economic
22 defense. Are you saying that you laid these people off for
23 cause?

24 MR. STUART: No.

25 JUDGE GIANNASI: Or was it an economic defense?

1 MR. STUART: Yes. My opening statement very clearly was
2 that the company rebalanced the drivers vis-à-vis the
3 third-party carriers. And there was a decision-making process
4 that went into that. And you asked me how many people were
5 still working there and I told you that there were upwards of
6 seven or eight people.

7 JUDGE GIANNASI: So is your position that in making that
8 layoff decision, you considered the competence of the
9 particular workers?

10 MR. STUART: Yes, that's correct.

11 JUDGE GIANNASI: All right. So are you saying that it was
12 an economic defense because I take it you got rid of this
13 group, the entire group?

14 MR. STUART: No, Your Honor. The entire group --

15 JUDGE GIANNASI: About 12 people.

16 MR. STUART: The entire group was not laid off. The
17 company rebalanced --

18 JUDGE GIANNASI: I see. Those 12 people, 12 or 13 people
19 that were laid off on the 27th --

20 MR. STUART: Yes, sir.

21 JUDGE GIANNASI: You're saying that some of them were laid
22 off for economic reasons and some for competence reasons?

23 MR. STUART: No. What I'm saying is that there was a
24 decision that was made to reduce the force. And in making that
25 decision, the company had to evaluate a number of

1 circumstances, which included the competence of the individual
2 employees and other things like their length of service and so
3 forth.

4 JUDGE GIANNASI: Well, I think I'll wait for your witness
5 to put this in.

6 MR. STUART: Okay, that's --

7 JUDGE GIANNASI: Because I don't understand your defense.
8 But that's all right. I mean I'm not taking it --

9 MR. STUART: I can't testify.

10 JUDGE GIANNASI: No, of course you're not, but I thought
11 you made an opening statement in which I understood your
12 defense to be that you had a need for subcontracting. And that
13 was my assumption, but --

14 MR. STUART: Let me clarify in case there was anything
15 that's unclear.

16 JUDGE GIANNASI: Well, this is beyond this witness'
17 competence.

18 MR. STUART: Perhaps -- this actually goes to other
19 questions that you have not allowed me to answer -- not allowed
20 me to ask. So let me, if I may, let me just state that our
21 opening statement, which is on the record, is that the company
22 rebalanced the number of drivers vis-à-vis the outside carriers
23 due to a number of factors including vehicle damage. Now
24 vehicles only become damaged when they're operated, you know,
25 not when they're stationary. Those vehicles were damaged in

1 their operation by the company's drivers.

2 JUDGE GIANNASI: Well, those decisions were made by your
3 witnesses and they --

4 MR. STUART: Yes.

5 JUDGE GIANNASI: -- will come up here and testify. I'm
6 not going to get into it with this individual.

7 MR. STUART: Okay. Thank you very much.

8 JUDGE GIANNASI: Your witness is the one who made the
9 decision. He didn't.

10 MR. STUART: Yes. And that's --

11 JUDGE GIANNASI: Go on. Let's address this witness'
12 testimony.

13 MR. STUART: So, Your Honor, just so we don't waste time,
14 what I had planned to do was show this witness very briefly
15 documents to authenticate that he had signed and received them.

16 JUDGE GIANNASI: Well, listen, listen, if you put them in
17 through your witness and it has his signature, I'm sure that
18 there will be no objection on the grounds that he didn't
19 receive it or he didn't sign it. So this will come in through
20 your case.

21 MS. BROWN: And there will be no objection. It's all
22 contained in the position statements that I tried to offer from
23 the beginning.

24 JUDGE GIANNASI: Right, okay. I don't want it now.
25 You've had it identified, but there will be no problem if you

1 want to put in those statements. There is not going to be any
2 problem about authenticity. And so put it on in your case.

3 MR. STUART: All right, thank you.

4 JUDGE GIANNASI: Let's get over this witness' testimony.

5 MR. STUART: All right. Then I think I might be done.

6 Let me just check my notes.

7 **(Pause.)**

8 MR. STUART: Mr. Lohrman -- strike that. Your Honor,
9 nothing further.

10 JUDGE GIANNASI: All right. Do you have any redirect?

11 MS. BROWN: No redirect. Thank you.

12 JUDGE GIANNASI: All right, you're excused.

13 THE WITNESS: Thank you.

14 **(Witness excused.)**

15 MS. BROWN: We call William --

16 JUDGE GIANNASI: No, no, we'll be in recess till 8:30
17 tomorrow morning.

18 MR. STUART: Thank you, Your Honor.

19 MS. BROWN: Your Honor, is it possible he can testify?
20 He's a very quick witness?

21 **(Discussion off the record.)**

22 JUDGE GIANNASI: On the record.

23 (Whereupon,

24 **WILLIAM LEHUTA,**

25 was called as a witness by and on behalf of the General Counsel

1 and, after having been duly sworn, was examined and testified
2 as follows:)

3 JUDGE GIANNASI: Be seated, please. Give your name and
4 address to the court reporter.

5 UNIDENTIFIED SPEAKER: Could we hold off? There is another
6 witness still in here.

7 JUDGE GIANNASI: Actually, that wouldn't be a violation of
8 the sequestration rule.

9 UNIDENTIFIED SPEAKER: Okay. I just wanted to make sure.

10 JUDGE GIANNASI: Because he testified and he's been
11 excused.

12 UNIDENTIFIED SPEAKER: Got you.

13 THE WITNESS: William, L-E-H-U-T-A.

14 COURT REPORTER: L-E-H-U-T-A?

15 THE WITNESS: That's right.

16 JUDGE GIANNASI: All right.

17 **DIRECT EXAMINATION**

18 BY MS. BROWN:

19 Q Mr. Lehuta, did you work for Pratt Corrugated Logistics?

20 A Yes, I did.

21 Q And what was your job classification?

22 A Truck driver.

23 Q Okay. And when did you start working?

24 A January 4, 2012.

25 Q Okay. And what steps did you take to get the job at

1 Pratt?

2 A I applied for the job November or December 2011. And I
3 was told everything looked good, but they were waiting to hear
4 from corporate and I would probably be hired right after the
5 new year.

6 Q Who told you that they were waiting to hear from
7 corporate?

8 A Phaedra Powell.

9 Q Do you know Francisco Ortiz?

10 A I do.

11 Q And who is he?

12 A I thought he was the night supervisor. When we would come
13 back in from making our trips at the end of the day, he would
14 be the person there that seemed to be in charge. We would give
15 him our paperwork and we would try to find out our trips for
16 the following day.

17 Q You would get that information from him?

18 A Yes.

19 Q Did anybody tell you that he was your supervisor?

20 A No one told -- I don't remember if anyone said that
21 directly or not, but I guess someone must have said it or I
22 don't think I would have reported to him, you know, if I didn't
23 think he was the person in charge.

24 Q Okay. Did he assign you any work in the yard?

25 A Yeah. When we'd come back, sometimes, if he needed

1 trailers to be moved, and he would ask us to do that and tell
2 us which doors, which ones to move and what doors to put it in,
3 so forth.

4 Q Okay. And when he told you which trailers to move, did
5 you have to move those trailers?

6 A Yes.

7 Q Did he have anything to do with determining your runs?

8 A I thought he -- it wasn't clear to me, but I don't -- I
9 thought he was making up the schedules as far as the run for
10 the following day.

11 MR. STUART: Objection, it's not clear, what he thought.
12 This witness doesn't have knowledge.

13 JUDGE GIANNASI: Right. What was your thought based on?

14 THE WITNESS: Well, we would come back --

15 JUDGE GIANNASI: Did you prepare this witness?

16 MS. BROWN: Yes, that's why I'm asking him what it's based
17 on.

18 BY MS. BROWN:

19 Q Go ahead.

20 A Well, because the -- I'm sorry, could you repeat the
21 question?

22 Q You said that you thought he had something to do with
23 determining your runs. And I asked you --

24 A Right.

25 Q -- what was that, what was it based on? What made you

1 think that?

2 A Because we would come back and there was a mailbox
3 outside, and if our runs weren't in the box for the following
4 day, then we would go in and look for them and ask him about
5 it. And a lot of times, they would be on his desk. I would
6 see the paperwork there with my name on his desk for the run
7 tomorrow. And I would ask him is that completed. He'd say,
8 no, I'm still working on it or whatever. And then so I'd know
9 what time to come in the following day.

10 Q When you --

11 JUDGE GIANNASI: And what time was this?

12 THE WITNESS: It would be in the evening. It depends.
13 Sometimes, it would be 7:00 at night or 8:00, depending what
14 time we got back from --

15 JUDGE GIANNASI: Was Phaedra there?

16 THE WITNESS: No. She would usually go home at 4:00 or
17 5:00.

18 JUDGE GIANNASI: All right, go on. You said it would be a
19 short witness.

20 MS. BROWN: Yes.

21 BY MS. BROWN:

22 Q Before you were let go, did anyone in management tell you
23 that they were considering laying off drivers?

24 A Not at all. It was just the opposite. That they were
25 going to be hiring more drivers.

1 Q Okay. Who told you that?

2 A Phaedra.

3 MS. BROWN: Nothing further. Thank you.

4 JUDGE GIANNASI: All right. Give them the affidavit and
5 let's move. Stay there. They're going to ask you some
6 questions.

7 THE WITNESS: Oh, okay. Thank you.

8 **(Pause.)**

9 **CROSS-EXAMINATION**

10 BY MR. STUART:

11 Q Mr. Lehuta, how are you?

12 A Good, sir. Thank you.

13 Q Good. Thanks for your patience in waiting today.

14 A Sure.

15 Q I'm Eric Stuart. I represent Pratt Corrugated Logistics.
16 You're our last witness of the day, so I'll try to be brief.

17 A Okay.

18 Q Francisco Ortiz, I want to direct your attention to Mr.
19 Ortiz. And before I do that, it's correct that Phaedra Powell
20 is your supervisor, correct?

21 A Yes, was.

22 Q She was during the time when you were employed --

23 A Right.

24 Q -- by Pratt. And she was -- you interacted with her with
25 regards to your runs and she was in contact with you on a daily

1 basis with regards to your truck driver duties, correct?

2 A Yes, sir.

3 Q And you're a professional CDL driver, right?

4 A Yes, sir.

5 Q Okay, great. Mr. Ortiz now, no one told you that -- no
6 one from Pratt Corrugated Logistics told you that Francisco
7 Ortiz was your supervisor, isn't that right?

8 A I can't recall. It may have been said that he was a
9 supervisor.

10 Q But you can't recall?

11 A Not exactly, you know. I wouldn't have, I mean I did
12 report to him, and I assumed he was, and someone may have said
13 that, but in my memory I can't recall.

14 Q Okay. Let me ask you this question and maybe it'll help.
15 Phaedra Powell never told you that Francisco Ortiz was your
16 supervisor, isn't that right?

17 A I can't say for sure, sir.

18 Q Okay. Now you say that you went into Mr. Ortiz' work area
19 and that you saw run sheets with your name on it on his desk.

20 A Um-hum.

21 COURT REPORTER: Say yes or no.

22 THE WITNESS: Yes.

23 BY MR. STUART:

24 Q You didn't physically see Mr. Ortiz write your name down
25 on those work orders. You just visually walked in and saw your

1 name, correct?

2 A I didn't see him write my name, but --

3 Q Okay, that was my question. Thank you. You've answered
4 it.

5 JUDGE GIANNASI: No. You wanted to say something else.
6 Continue.

7 THE WITNESS: Well, I was just going to say that his desk
8 was where we were supposed to, told to go look for where the
9 information was. He was the only one there basically when we'd
10 come back in the evening.

11 BY MR. STUART:

12 Q So let me see if I understand your testimony. You arrived
13 in the evening. You went to Mr. Ortiz' work area, and you saw
14 a run with your name on it.

15 A Yes, sir.

16 Q How far from Mr. Ortiz' work area is Phaedra Powell's work
17 area?

18 A It's another office. She has a separate office.

19 Q And is it across the building?

20 A No.

21 Q Across the street?

22 A No. It's adjacent to.

23 Q Adjacent?

24 A Um-hum.

25 Q Okay, that's right there next to each other.

1 A Um-hum.

2 Q Okay. And generally during your workday, during the day,
3 Phaedra Powell or the dispatcher from Pratt Corrugated
4 Logistics would assign the runs?

5 A Yes.

6 MR. STUART: Okay. Nothing further.

7 JUDGE GIANNASI: Okay. Any redirect?

8 MS. BROWN: No, Your Honor.

9 JUDGE GIANNASI: All right, you're excused.

10 THE WITNESS: Thank you.

11 **(Witness excused.)**

12 JUDGE GIANNASI: All right, we'll be in recess till
13 9:00 a.m. tomorrow.

14 **(Whereupon, at 5:17 p.m., the hearing in the above-entitled**
15 **matter adjourned, to reconvene on Wednesday, January 16, 2013,**
16 **at 9:00 a.m.)**

C E R T I F I C A T E

This is to certify that the attached proceedings done before
the NATIONAL LABOR RELATIONS BOARD REGION FOUR

In the Matter of:

**PRATT (CORRUGATED LOGISTICS), LLC; PRATT (ALLENTOWN
CORRUGATED), LLC; PRATT INDUSTRIES (USA), INC.,**

Respondents,

and

TEAMSTERS LOCAL 773,

Charging Party.

Case Nos. 4-CA-079603, 4-CA-079858, 4-CA-079976,
4-RC-080108

Date: January 15, 2013

Place: Philadelphia, Pennsylvania

Were held as therein appears, and that this is the original
transcript thereof for the files of the Board

Official Reporter

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BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

**PRATT (CORRUGATED LOGISTICS),
LLC, PRATT (ALLENTOWN
CORRUGATED), LLC, PRATT
INDUSTRIES (USA), INC.,**

and

TEAMSTERS LOCAL 773.

**Case Nos. 4-CA-079603
 4-CA-079858
 4-CA-079976
 4-RC-080108**

The above-entitled matter came on for hearing pursuant to Notice, before **ROBERT A. GIANNASI**, Administrative Law Judge, at One Independence Mall, 615 Chestnut Street, Hearing Room 3, Philadelphia, Pennsylvania, on Thursday, January 17, 2013, at 9:00 a.m.

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<u>I</u> <u>N</u> <u>D</u> <u>E</u> <u>X</u>					
<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR</u> <u>DIRE</u>
PHAEDRA POWELL	374	421	--	--	--

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E X H I B I T S

<u>EXHIBIT NUMBER</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
GENERAL COUNSEL'S		
(None)		
Respondent's		
R-9	378	379
R-10	407	408
R-11	409	411
R-12	418	419

P R O C E E D I N G S

(Time Noted: 8:53 a.m.)

ADMINISTRATIVE LAW JUDGE GIANNASI: On the record.

MR. COXSON: Your Honor, Corrugated Logistics calls
Phaedra Powell.

JUDGE GIANNASI: Ms. Powell, come on up here. Raise your
right hand, please?
Whereupon,

PHAEDRA POWELL,

having first been duly sworn, was called as a witness and
testified as follows:

JUDGE GIANNASI: Be seated please. Give your name and
address to the reporter and speak up.

THE WITNESS: My name is Phaedra Powell.

COURT REPORTER: Okay, and could you just spell your first
name, "P" as in Paul, "H" as in Harry, "A", "E" as in elephant,
"D" as in dog, R-A.

COURT REPORTER: Okay. Just speak your address.

THE WITNESS: 1992 Sunset Drive, Whitehall, Pennsylvania,
18052.

COURT REPORTER: Okay, thank you.

MR. COXSON: Good morning, Ms. Powell.

THE WITNESS: Good morning.

MR. COXSON: My name is Christopher Coxson, I represent
Corrugated Logistics in this matter.

1 Q Okay. And what were your responsibilities with National
2 Freight?

3 A Dispatching the drivers, the day-to-day operations,
4 getting them head holes out of the facilities, picking up back
5 calls that come back, trying to minimize as many empty miles as
6 possible so can try and make a profit.

7 Q Okay. And this is with National Freight?

8 A Yes.

9 Q Okay. Now, let's focus on the period of the early stages
10 of your employment at Corrugated Logistics. You said you were
11 hired in the October of 2011, correct?

12 A Yes.

13 Q Okay. Tell me about your responsibilities at Corrugated
14 Logistics in the early stages of your employment?

15 A Corrugated Logistics, I was responsible for hiring the
16 drivers, I was basically the recruiter, I was responsible for
17 making sure the drivers were compliant with DOT, their
18 licenses, their drug testing. I was in charge of getting the
19 loads out of the facility, bringing the loads back in, again,
20 trying to minimize the cost factor. I was in charge of
21 payroll. I am in charge of -- I was in charge of hiring a
22 dispatcher. I started everything from the ground up. I was
23 basically building a business.

24 Q Okay. And how would you compare your responsibilities at
25 Corrugated Logistics versus the responsibilities you held at

1 National Freight?

2 A There was a lot more involved with Corrugated Logistics.
3 At National Freight Industries we had our own maintenance
4 department; we had our own safety department. At Corrugated
5 Logistics I'm basically handling the safety for that facility
6 and the maintenance of the trailers as well as the tractor. I
7 never did that before.

8 Q Okay. And you said how -- at the beginning you were
9 involved in the hiring of the drivers is that right?

10 A Yes, I was basically the recruiter.

11 Q Okay. Were you -- was there a number of drivers that you
12 had targeted for the initial startup that Corrugated Logistics
13 was interested in hiring?

14 A Professional CDL drivers with a minimum of three-year's
15 experience.

16 Q Okay. And about how many were you looking to hire?

17 A The initial startup called for 15, again, it was the
18 startup so there wasn't much going on at the facility, they had
19 to build a customer base in the area.

20 Q Okay. And in your position at Corrugated who do you
21 report to?

22 A I report to Tom Olshefski.

23 Q Okay. And where is he located?

24 A He is in Valparaiso, Indiana.

25 Q And in your role in hiring employees at the startup you

1 said that there was a target of about 15. Was that something
2 that he told you to do?

3 A Yes.

4 Q Okay.

5 A In the beginning he told me that we needed to get up to 15
6 drivers right away so that we could service our customer. They
7 were expecting growth very quickly, and it did happen.

8 Q So in addition to Corrugated drivers that you were
9 responsible for recruiting did Corrugated Logistics also use
10 outside contractors?

11 A Yes, we did. The first day when I stepped into the
12 facility we had outside contractors there.

13 Q Okay. Do you recall which outside contractors were there?

14 A Yes, we had three drivers from NFI, National Freight
15 Industries, working there already.

16 Q In addition to the drivers did Corrugated also rent
17 equipment at that time?

18 A Yes. I was in charge of getting the equipment at the
19 facility, I was in charge of bringing the trailers into the
20 facility, I was in charge of bringing the tractors from Penske
21 into the facility. Something again I never did before.

22 Q Okay. So the tractors came from Penske, where did the
23 trailers come from?

24 A Covenant Transport. The guy that we talked to, his name
25 is Ron Phillips, he's in Tennessee, so I was on the phone with

1 him trying to coordinate us getting drivers to bring the
2 trailers from on facility to Macungie, P.A.

3 Q Okay.

4 MR. COXSON: Your Honor, may I approach the Witness?

5 JUDGE GIANNASI: Yes.

6 MR. COXSON: Thank you.

7 **(Respondent Exhibit 9 marked for identification.)**

8 MR. COXSON: Take your time and look through this, it's a
9 multiple page document. I believe it's about 24 pages long.

10 **(Witness examines document.)**

11 BY MR. COXSON:

12 Q Do you recognize this document, or do you know what this
13 document is?

14 A Yes.

15 Q What is this?

16 A This is an invoice regarding the trailers that I have at
17 my facility.

18 Q Okay.

19 A From Ron Philips that we rent on a monthly basis.

20 Q And is there a time period that this document covers?

21 A Yes, 2012, January -- from December to January, 2012.

22 Q The first page of the document is that -- does that cover
23 the billing period for November?

24 A Yes, November 1st to November 30th.

25 Q Of 2011?

1 A Yes, it's dated November 27th.

2 JUDGE GIANNASI: These are trailers only, not the trucks?

3 THE WITNESS: These are just the trailers.

4 JUDGE GIANNASI: Okay.

5 BY MR. COXSON:

6 Q And how are you familiar with this document?

7 A I get the invoice once a month and I have to approve it
8 and then send it down to corporate to be paid.

9 Q Okay.

10 MR. COXSON: Your Honor, Respondent moves Exhibit 9.

11 JUDGE GIANNASI: Any objection?

12 MS. BROWN: No, Your Honor.

13 JUDGE GIANNASI: Any objection?

14 MR. RODRIGUEZ: No, Your Honor.

15 JUDGE GIANNASI: Received.

16 **(Respondent Exhibit 9 received in evidence.)**

17 JUDGE GIANNASI: You're not putting it in for the
18 handwritten notation, right?

19 MR. COXSON: That's right, Your Honor.

20 BY MR. COXSON:

21 Q Ms. Powell, at the startup, you know, again we're looking
22 at the period of about November, correct, when the company
23 started operations?

24 A Yes.

25 Q November of 2011?

1 A Yes.

2 Q Okay. Did the customer demand increase at the startup
3 period? You know, shortly after the startup period.

4 A You mean of drivers?

5 Q No, customer demand for product.

6 A Yes.

7 Q Okay.

8 A It increased very quickly.

9 Q And as a result of that increase in demand what effect did
10 that have on your job?

11 A It became a little bit more difficult, with me being alone
12 I had to do a lot more, many -- I had to wear many more hats, I
13 had to hire the drivers very quickly, get this equipment in
14 there, get the trucks in there, get everything started up.

15 Q And was there any resulting problems that come from this
16 increase in demand?

17 A It was just a lot for me. I was new to the position.
18 Again, I worked at Nations Freight Industries, I didn't have to
19 wear so many different hats, we had our own recruiting
20 department, we had our own maintenance department, we had our
21 own safety department. I was doing everything by myself.

22 Q Okay.

23 A Starting it up.

24 Q Was there an increase in damages to the tractors and
25 trailers?

1 A As time went on, yes.

2 Q How do you know that?

3 A Because again I got the invoices from the trailer people -
4 - the maintenance people, the trailers, the tractors and the
5 trailers.

6 Q And when you received the invoices for the damages what do
7 you do with them?

8 A I have to send them down -- I have to let Tom know about
9 the because some of them were pretty costly and we have a
10 budget to follow every month, so a lot of the damages were not
11 getting fixed right away, I had to get it approved through Tom
12 before I could -- before we paid a bill.

13 Q And when you say "Tom" do you mean Tom Olshefski?

14 A Tom Olshefski.

15 Q Okay. And when you talk about the budget does that effect
16 your -- the ability to repair the trucks and trailers right
17 away?

18 A Yes, it does. We have to stay at a certain amount, I
19 mean, we don't want to -- it is a business, we don't want to go
20 under like any other business, we have a --

21 JUDGE GIANNASI: Do you have a written budget?

22 THE WITNESS: We have a P&L I need to follow every month,
23 and I have to try to meet a certain dollar amount, like run at
24 eight percent operation ratio.

25 JUDGE GIANNASI: So there are some documents that you use

1 to reference that?

2 THE WITNESS: Yes, where I need to be monthly.

3 BY MR. COXSON:

4 Q Did the increase in damage effect the on-time delivery to
5 customers at all?

6 A Yes. When we do not have the equipment available, readily
7 available, I would get e-mails from the general manager about
8 servicing his customer and they wasn't -- they weren't very
9 nice, the e-mails I would get.

10 JUDGE GIANNASI: This is the general manger of whom?

11 THE WITNESS: Corrugated Allentown, my customer.

12 JUDGE GIANNASI: All right. That was your major customer?

13 THE WITNESS: That was my major customer.

14 JUDGE GIANNASI: That's the one who provided you with the
15 corrugated material to deliver?

16 THE WITNESS: Yes.

17 JUDGE GIANNASI: All right. And is that person located at
18 your Macungie location or is it in a different area?

19 THE WITNESS: He's located at the Macungie location.

20 JUDGE GIANNASI: All right. The same location as you are?

21 THE WITNESS: Yes, he works in the -- they're up front,
22 I'm in the back.

23 JUDGE GIANNASI: Okay.

24 THE WITNESS: It's a huge facility.

25 JUDGE GIANNASI: How many employees in the manufacturing

1 end of it?

2 THE WITNESS: On the corrugated side I believe it's like
3 105 maybe.

4 JUDGE GIANNASI: They do production?

5 THE WITNESS: Yes, they do the production, the corrugating
6 of the boxes, that's their business.

7 JUDGE GIANNASI: Yeah.

8 THE WITNESS: Yeah, they don't have anything to do with my
9 operation.

10 JUDGE GIANNASI: Okay.

11 BY MR. COXSON:

12 Q And, Ms. Powell, when you -- when you were incurring these
13 damages and incurring these invoices did you regularly
14 communicate that to Mr. Olshefski?

15 A Yes, I had to, I had to -- again, we have the budget to
16 follow and he has to answer to his bosses, so I had to let him
17 know when I got these invoices and then I was -- if it was
18 caused by a driver that didn't -- that had an accident I had
19 discipline that driver also.

20 Q And was Mr. Olshefski aware of all those actions as well?

21 A Yes.

22 Q Okay.

23 MR. COXSON: This is already in evidence as General
24 Counsel's 10.

25 JUDGE GIANNASI: Now, I believe I've had some notices for

1 this employee. This is not a duplicate is it?

2 MR. COXSON: It's General Counsel's 10, I'm just --

3 JUDGE GIANNASI: Oh, I see.

4 MR. COXSON: Yeah.

5 JUDGE GIANNASI: Okay, I'm sorry.

6 MR. COXSON: Okay.

7 JUDGE GIANNASI: I've seen this before, yeah. All right,
8 go ahead.

9 BY MR. COXSON:

10 Q Now, Ms. Powell, do you recognize the document that I just
11 handed to you?

12 A Yes.

13 Q And is this an employee disciplinary report?

14 A Yes.

15 Q And for whom?

16 A Guillermo Mejia.

17 Q And the date of the incident?

18 A The date of the incident is March 30th.

19 Q Okay. Is that your signature under "signature of
20 supervisor"?

21 A Yes.

22 Q And you signed that on March 30?

23 A Yes.

24 Q Okay. And what is the incident concerning?

25 A Guillermo came in and reported to me that he had an

1 accident in the yard. He told me that while he was trying to
2 pull it -- he connected to the trailer and as he was pulling it
3 out he didn't properly raise the landing gear. Guillermo is a
4 professional CDL driver, this is something that he should know,
5 I mean, even I know it and I'm not a CDL driver, he should
6 raise the landing gear all the way off the ground. Instead he
7 got into the yard jockey truck and he pulled the trailer away
8 from the door with the legs -- the nose of the trailer, the
9 legs that hold the trailer up, he dragged it across the ground.

10 Q Okay. Did you -- and I see that there's -- under
11 "employee comments" there's a signature there, did he sign that
12 in front of you?

13 A Yes, he signed this.

14 Q And did you discuss this with him?

15 A Yes, I discussed this with him in my office.

16 Q Okay. Was there anyone else present when you discussed it
17 with him?

18 A Yes, Erin Cutler the HR manager.

19 Q Okay. And tell me about your discussion with Mr. Mejia?

20 A I spoke to Guillermo and I told him, "This was a careless
21 mistake. You're a professional driver, you've been driving for
22 many, many years. This is something so simple as to me getting
23 into my car and putting the key into the ignition. You know
24 you're supposed to raise the landing gear totally off the
25 ground. This is a serious offence in that it's very costly."

1 Q And did he respond to that at all?

2 A No, he came to me to tell me that he actually did it. He
3 just apologized, he said he's very sorry and that was it.

4 Q Did you tell him that it would be okay or that -- not to
5 worry about it?

6 A No, I never told him it would be okay. This is a serious
7 offense, and then I have to go explain this to my supervisor.

8 Q Now, when you handed this to Mr. Mejia, when you're
9 looking at GC Exhibit 10 in front of you, was this completely
10 filled out when you handed this to him?

11 A Yes, everything was filled out in its entirety.

12 JUDGE GIANNASI: Except his signature, I see.

13 THE WITNESS: Except for his signature.

14 JUDGE GIANNASI: How about Erin Cutler's signature?

15 THE WITNESS: We all signed this in one room together.

16 JUDGE GIANNASI: Oh, I see.

17 THE WITNESS: Guillermo and Erin, after we discussed
18 everything. He did not deny anything, he just apologized and
19 he signed.

20 BY MR. COXSON:

21 Q And when you say it was completely filled out does that
22 include all the checkmarks on this document?

23 A Yes, the counseling, the warning, the loss focus on the
24 tandem, the checkbox where I said "other".

25 Q Right. And what about the time table for improvement?

1 A Yes, immediate and discipline up to, including discharge.
2 This was, again, a very serious offense with him damaging our
3 trailer, and he was in the yard.

4 Q Thank you.

5 JUDGE GIANNASI: Now, you say that -- did I understand you
6 to say that when you get a discipline for damages that you have
7 to report it to Tom?

8 THE WITNESS: Yes. I have to report it to the safety
9 director, Tina Overstreet, and I have to let Tom know.

10 JUDGE GIANNASI: And did you let him know about this?

11 THE WITNESS: Yes, I did.

12 MR. COXSON: And this is already in evidence too, Your
13 Honor. This GC 11.

14 BY MR. COXSON:

15 Q Ms. Powell, do you recognize the document that I just
16 handed to you?

17 A Yes.

18 Q And this also is an employee disciplinary report, right?

19 A Yes.

20 Q And is this for Guillermo Mejia as well?

21 A Yes.

22 Q Okay. Is that your signature under "signature of
23 supervisor"?

24 A Yes.

25 Q And what is the date of your signature?

1 A April 4, 2012.

2 Q Okay. So that is five days -- I think it's five -- five
3 days after the previous incident?

4 A Yes.

5 Q And tell me about what this report is about?

6 A I had talked -- I had spoken with Guillermo on numerous
7 occasions about going directly to my customer to speak to them
8 about something -- about things that's going in my operation.
9 He is to report directly to me or the dispatch manager to let
10 us know if anything -- if he needs anything or if anything has
11 gone wrong in the yard. Instead Guillermo disregarded all of
12 that and he'll go directly to the customer, not having all his
13 facts together, and then that in turn left me look incompetent,
14 and the customer, which in this case Jay Baldwin (ph), would --
15 again, with the not-so-nice e-mails because of something that
16 Guillermo did. I had spoke to him on several other occasions
17 about giving them bad information.

18 Another example is we have walkie-talkies throughout for
19 Corrugated Logistics and for the Corrugated plant. They would
20 ask him, "Guillermo, do we have any empties in the yard?" He
21 would immediately say "No." With that -- the yard -- again,
22 this is a big place, without him even going to check, he never
23 checked with me, he didn't check with my dispatch manager, he
24 would just say, "No."

25 That in turn will put the fire back on my from the

1 customer, customer service on-time delivery, "Phaedra, we need
2 trailers, we need" -- without him having all the facts, and
3 Guillermo would do this all the time.

4 JUDGE GIANNASI: Now, was there any specific incident that
5 caused you to write him up? I mean, you say he did this all
6 the time, but this as a specific -- did a specific incident
7 precipitate this warning?

8 THE WITNESS: Yes.

9 JUDGE GIANNASI: Well, that's what you need to describe.

10 MR. COXSON: Okay.

11 BY MR. COXSON:

12 Q And so following on Your Honor's line of questioning, this
13 document is dated -- or the incident is dated 4/4/12, is that a
14 date that this incident occurred, or one of these reporting
15 incidents occurred?

16 A Yes.

17 Q Okay.

18 A It did. What happened when I wrote this up was that two
19 employees from the plant came into my office, bombarded me in
20 my office and said, Guillermo is saying that you said this and
21 you said I'm not doing my job, and I was totally blindsided, I
22 didn't know what they were talking about. So I then called
23 Guillermo in the office to kind of get to the bottom of this,
24 and Guillermo said, "I never said that to him." And then the
25 employee was like, "Guillermo, you stood right there and told

1 me that she said" --

2 JUDGE GIANNASI: Were the employees present along with
3 Guillermo?

4 THE WITNESS: Yes.

5 JUDGE GIANNASI: When you wrote this up?

6 THE WITNESS: No.

7 JUDGE GIANNASI: Oh, this is before you wrote it up, on
8 the same day?

9 THE WITNESS: This is before I wrote it up, yes.

10 JUDGE GIANNASI: This says it was 8:00 a.m., so sometime
11 before --

12 THE WITNESS: Yes.

13 JUDGE GIANNASI: -- 8:00 a.m. the employees came in and
14 complained to you and they were in your presence and in
15 Guillermo's presence?

16 THE WITNESS: Yes.

17 JUDGE GIANNASI: All right.

18 BY MR. COXSON:

19 Q And how did that meeting end?

20 A They all left out of the office because it was a
21 misunderstanding from Guillermo telling them incorrect
22 information.

23 Q Okay.

24 A And everybody left out of the office, I called up Erin and
25 let her know -- the HR manager, and let her know what happened,

1 because anytime I discipline somebody I like to let -- get HR
2 involved. So, again, she came to my office and we documented
3 the incident.

4 Q And just so that I'm clear, you said this wasn't the first
5 time, that there's another time that you had written him up?

6 A Right.

7 Q Okay.

8 A I mean, I don't want to write my drivers up for every
9 little thing they do, but this is something so big it falls
10 back on me, on my operation, that I'm not running it correctly
11 because he's giving out that information. All I asked him to
12 do was just come to me or to my dispatch manager, don't talk to
13 my customer, you come to us first.

14 Q And did this make your job more difficult?

15 A Yes, it was very difficult.

16 Q One other question of this document. Was -- when you
17 handed this to Mr. Mejia was this document completely filled
18 out?

19 A Yes, everything was filled out, the boxes were checked,
20 everything -- it was a counseling, I didn't give him a warning
21 or a final warning because this was the first time I had wrote
22 him up for this particular type of incident, reporting
23 information to my customer.

24 Q And did you tell him during this meeting, "Don't worry
25 about it"?

1 A No, I never told --

2 Q "It's not a big deal"?

3 A No, I never told him that.

4 MR. COXSON: I'll hand you two documents. This is -- Your
5 Honor, this is the disciplinary report that's GC Exhibit 12.

6 BY MR. COXSON:

7 Q Ms. Brown, (sic), do you recognize the document that I
8 just handed to you? I'm sorry, Ms. Powell, I was looking at
9 Ms. Brown.

10 A Yes, I recognize it.

11 Q Okay. And what -- whose name is on this report?

12 A Guillermo Mejia.

13 Q Okay. And what is the date of incident on here?

14 A April 16th.

15 Q Okay. And is that your signature?

16 A Yes, that's my signature.

17 Q Okay. And this is -- it says that you dated this April
18 24?

19 A Yes.

20 Q Okay. Well, first of all, tell me what this incident
21 concerns.

22 A On April 16th I asked Guillermo to lock a trailer down,
23 meaning to put a trailer out of service. We have a tagging
24 system where we have three different color tags. A green tag
25 means, "Go", the trailer is DOT compliant, it can go out, a

1 yellow tag means that it has returns on it, something is on
2 that trailer, it's not totally empty but it is okay to ride, a
3 red tag is "Stop, no", you can't -- it's out of service, you
4 can't use that trailer.

5 So it was reported to me by several other drivers,
6 including Guillermo, that the landing gear on this particular
7 trailer was not quite right, it was -- again, you need the
8 landing gear to lift totally off the ground, and it needs to go
9 with ease so the driver won't get hurt, and so -- that the
10 landing gear is not dragging on the ground.

11 He -- I asked him to put the trailer out of service, to
12 lock it down. I found out a couple of days later that the
13 trailer had went out on a load, I had a bill of lading for --
14 the bill of lading is the load that it actually went out on, my
15 dispatch manager said, "Hey, did you know that this trailer
16 went back out on the road?" And I said, "I told Guillermo to
17 lock the trailer down and put it out of service." I mean, that
18 put the driver that actually had the trailer at risk. If the
19 trailer was dropped at a customer and someone went on the
20 trailer with a forklift, a 10,000, 20,000 pound forklift, the
21 trailer could have just collapsed with that person inside the
22 trailer. This is another serious offense. Carelessness.

23 Q And as a result what action did you take in this
24 disciplinary report?

25 A I gave him a final warning on this, "Lack of failure to

1 following our instructions."

2 Q Okay.

3 JUDGE GIANNASI: And you dated this on the 24th?

4 THE WITNESS: Yes, after I found out that the trailer went
5 back out on the road after I told him to lock the trailer down.

6 JUDGE GIANNASI: Now, this does not indicate that the
7 employee signed it. Did you give this, physically give this to
8 him?

9 THE WITNESS: Yes, we were Erin Cutler's office, this was
10 his final warning, and this was actually the day that he was
11 terminated, and he did not sign it.

12 JUDGE GIANNASI: But was he at this meeting where you
13 presented this to him?

14 THE WITNESS: Yes, we were in -- it was Guillermo, Erin
15 Cutler, myself and my dispatch manager, Christian Westgate.

16 JUDGE GIANNASI: So when you presented this to him you
17 basically fired him at that meeting?

18 THE WITNESS: There was another write-up involved.

19 MR. COXSON: Your Honor, I have the other write-up.

20 JUDGE GIANNASI: Oh.

21 MR. COXSON: I'll bring that up too.

22 BY MR. COXSON:

23 Q And, Ms. Powell, I just handed you a document that is --
24 has already entered into evidence as General Counsel Exhibit
25 13. Can you tell me what this document is?

1 A This is another disciplinary report for Guillermo Mejia.

2 Q Okay. And when you were just answering Your Honor about
3 the fact that this was at one meeting where you handed him both
4 documents, and is this the other document that you handed to
5 Mr. Mejia?

6 A Yes.

7 Q Okay. And what is the incident, or what led to the
8 dismissal that's checked in this box -- in this termination
9 letter?

10 A The signature on this report is my dispatch manager,
11 Christian Westgate, and on April 23rd, again, we had spoke to
12 Guillermo about reporting information directly to our customers
13 that are coming to us. Guillermo came in the office, walked
14 right past Christian, his direct supervisor, and he walked past
15 my office, went directly to the customer to give him
16 information without speaking to the dispatch manager or myself.

17 JUDGE GIANNASI: And this was the day before?

18 THE WITNESS: Yes.

19 JUDGE GIANNASI: Now, let me ask you this, I may be
20 interrupting the flow here, but you say your customer
21 supervisor, was it in the same office complex as you?

22 THE WITNESS: Yes. We're all in the same --

23 JUDGE GIANNASI: Office area?

24 THE WITNESS: Yes, but we're separated, Corrugated
25 Logistics is on one side and the shipping manager and shipping

1 supervisors are on the other side.

2 JUDGE GIANNASI: That's for Corrugated Allentown? That's
3 for the manufacturing side?

4 THE WITNESS: Yes.

5 JUDGE GIANNASI: Okay, all right. Go ahead.

6 MR. COXSON: Okay.

7 BY MR. COXSON:

8 Q And so you mentioned that you were in the office with Ms.
9 Cutler and Mr. Mejia and you handed him both of these
10 documents?

11 A Yes.

12 Q This Mr. Mejia? And what did you say to him?

13 A I went over the one -- the document that I had wrote up
14 and my dispatch manger, Christian, went over this document that
15 Exhibit 13.

16 JUDGE GIANNASI: So he was in the meeting as well?

17 THE WITNESS: Yes, he was in the meeting as well. And
18 this led to Guillermo's dismissal. I mean, we had spoken to
19 Guillermo on several different occasions about his carelessness
20 with the trailers, with our equipment, and about him speaking
21 to our customer. I causes a lot of friction between us, makes
22 us look incompetent, "us" being Corrugated Logistics, by the
23 information that he's reporting. It is very important that he
24 doesn't do that, he needs to come directly to us and speak to
25 us first and let us deal with it.

1 BY MR. COXSON:

2 Q When you presented these disciplinary reports to him, the
3 one for dismissal, the other for final warning, did you give
4 him an opportunity to write comments or to sign the documents?

5 A Yes, I did. He actually, during these two write-ups, he
6 knew it was a dismissal, he started to tear up, and he actually
7 thanked me for giving him the opportunity to come and work for
8 Corrugated Logistics.

9 Q And when you handed him these two documents was -- were
10 they filled out as completely as they are right now?

11 A Yes.

12 Q All the boxes were checked?

13 A Yes.

14 Q And who made the decision to terminate Mr. Mejia?

15 A I made the decision.

16 Q Okay. Was your decision based at all on union activity?

17 A No.

18 **(Pause)**

19 BY MR. COXSON:

20 Q Okay, Ms. Powell, I'm handing you what was previously
21 entered into evidence as General Counsel's Exhibit 8, do you
22 recognize this document?

23 A Yes.

24 Q Okay. And is this a disciplinary corrective action report
25 for Christian Salazar?

1 A Yes.

2 Q Okay. And is that your signature under "signature of
3 supervisor"?

4 A Yes.

5 Q Okay. And what is this discipline for?

6 A This is a discipline form for Christian when he had a
7 rollover accident with -- when he was moving roll stock back
8 from our -- from a warehouse in Landisville, Pennsylvania he
9 had an accident, a serious accident on the highway.

10 Q How did you hear about it?

11 A Christian called me on the day of the incident.

12 Q Okay. And what did he say when he called you?

13 A He called me and said that he was involved, he just rolled
14 the truck over.

15 Q And was -- did you respond?

16 A At first, me being new, I was very nervous, I said,
17 "Christian, what did you just say?" He said, "I rolled the
18 truck over." I said, "What do you mean you rolled the truck
19 over?" He said, "The trailer, everything is on its side." And
20 at that time I knew what he had on the truck, I just didn't
21 know what to expect.

22 So he told me that the authorities were there, the police,
23 the ambulance, and I asked him was he hurt, he said, "No, he's
24 just on his side." He said the ambulance came but he did not
25 want to get in it, he didn't want to get into the ambulance.

1 So, again, me being new I called up the safety director
2 and asked her, you know, "How do we handle this?" So she told
3 me that I had to leave the operation, I was the only one there
4 at the time, go out there and take as many photos as I can and
5 try to get as much detail about the accident as I can.

6 Again, I never did this before, I worked for bigger
7 companies where they had their own safety department and they
8 did all of this. So I got into my car and I went out to where
9 he told me he was. When I got there he was walking -- he
10 looked shaken up, he was walking around smoking a cigarette,
11 and I was just talking to him, the trailer was linked on its
12 side so I started taking pictures on my iPhone, started sending
13 them to Tina Overstreet and Tom Olshefski, and I guess
14 Christian had called his wife at the time also and she showed
15 up on the scene as well.

16 Q Okay. And what did you do after you did all that at the
17 scene, what did you do next?

18 A We went back -- I went back -- I got back into my vehicle
19 and I went back to my car, he came back to the company with his
20 wife.

21 Q Okay. And when he got back to the company what did you
22 do?

23 A When we got back to the facility Christian started
24 complaining that he was in pain, that his leg was sore and he
25 wanted to go to the doctors. So our safety manager at the

1 time, Matt, he came and he took Christian to our physician in
2 Allentown.

3 Q Okay. And did he come back to the facility at some point
4 that day?

5 A I don't think Christian did. He told me he had to get --
6 he called me and told me he had to get an MRI done, and --
7 cause he had bruising on his leg, according to the physician,
8 and he was off. The very next morning he called me and said he
9 was very, very sore, he couldn't drive because he had also pain
10 meds too, and you can't drive when you have those types of
11 drugs in your system, so he was off several days after that.

12 Q Okay. And is that why the signature for -- next to your
13 name, is January 9, that it took some time before he came back?

14 A Yes, we had the holiday, the New Year's holiday, and he
15 was off several days after that.

16 Q No, looking at this document, under the facts of the
17 incident, did -- who wrote that?

18 A Christian wrote it.

19 Q Okay. And why is that?

20 A Again, I was new, I gave him the paper and I told him to
21 put down what he thought -- what happened when he was on the
22 road. I spoke to Tom, Tom told me not to ever do it like that
23 again, and moving forward I didn't, I never gave the driver the
24 paper to fill out. I mean, again, I was new, I was used to
25 dealing with bigger -- with a bigger carrier, NFI had their own

1 safety department that handled this. I wasn't the person
2 dealing with that. So he told me how to handle the movement
3 forward and that's what I did.

4 Q Now, at any time, let's go back to the date of the
5 incident to begin with, at any time did you tell Mr. Salazar
6 that -- not -- that a warning would be the end of the incident?

7 A No, I never told him that, he was actually worried about
8 losing his job.

9 Q How do you know that?

10 A Because he called Katrina Overstreet asking -- he asked me
11 was he going to lose his job, and then he also called Katrina
12 Overstreet and asked her was he going to lose his job --

13 Q Okay.

14 A -- because he couldn't lose his job at the time.

15 Q Well, let's put that in some context though. At -- when
16 you handed him the disciplinary report where was he working at
17 that time?

18 A He was working for Corrugated --

19 Q I'm sorry, that was a poorly phrased question. In what
20 area was he working for Corrugated? Was he continuing to be --
21 to drive or --

22 A When he came back to work he was put on restrictive duty,
23 so the note that he gave us was that he had to be -- he was not
24 able to get in then truck and drive, he was put on light-duty,
25 what we call light-duty.

1 JUDGE GIANNASI: From the doctor?

2 THE WITNESS: Yes, from the doctor. And he was out of the
3 truck for several weeks in the office working, so I gave him
4 little odd jobs to do, but he was still asking what was going
5 on, what's going to happen to his job. I told him that's up to
6 safety, up to our Conyers, George's office to let me know
7 what's going to happen because they're still investigating
8 that.

9 BY MR. COXSON:

10 Q Did you tell him it was up to Mr. Olshefski as well?

11 A Yes.

12 Q And you said he was doing some odd job. What do you mean
13 by that? What was he doing?

14 A I had him putting folders together, trailer -- he made all
15 the folders for the trailer number that you handed me earlier,
16 he made all the folders for the tractors, he made folders for
17 the driver logs.

18 We had a dispatcher from Valparaiso, Indiana come in,
19 showed him how to put on-board computers in the truck. This is
20 how the drivers receive their dispatch through an on-board
21 computer that's on the truck, showed him how to do that.

22 And I also -- he helped me out. I showed him how to do a
23 little -- our dispatching, so he dispatched the drivers in the
24 computer. He couldn't just sit there and not do anything, so I
25 had to give him some work to do.

1 Q Okay. And at any time while he was back at the company on
2 restrictive duty or thereafter did you tell him that -- or did
3 you offer him a job as a dispatcher?

4 A No, I never offered Christian a job as a dispatcher. We
5 already had a dispatcher there, he name was Lisa Schmetzel
6 (ph). After Lisa left Christian Westgate was hired while
7 Christian Salazar was still working for us.

8 Now Christian had talked to me while he was still working
9 in the office. We took a walk outside, and he said, "You
10 know,, I'm a little worried", he was --

11 JUDGE GIANNASI: You're talking about two Christians.
12 Salazar?

13 THE WITNESS: Yes, I'm talking about Salazar, we have --

14 JUDGE GIANNASI: The other person is Christian Westgate,
15 right?

16 THE WITNESS: Yes.

17 JUDGE GIANNASI: All right. Well, let's be specific here.

18 THE WITNESS: Okay. I'm sorry. Christian Salazar --

19 MR. COXSON: Thank you.

20 THE WITNESS: -- while he was on light duty we were
21 leaving the facility and he told me that he was thinking about
22 maybe becoming a dispatcher, he wanted to get out of the truck,
23 he didn't want his license to be damaged because he was still
24 worried about this accident. And I said, "Christian, that's a
25 lot" --

1 MR. RODRIGUEZ: Objection, speculation "because he was
2 still worried about the accident."

3 JUDGE GIANNASI: Well, I want to know --

4 THE WITNESS: Oh.

5 JUDGE GIANNASI: --what he said and what you said. Did he
6 say that?

7 THE WITNESS: Yes. He said that he was still worried
8 about his license and losing his license after this rollover
9 accident, so he was thinking about getting out of the truck and
10 maybe becoming a dispatcher. And I told him it's a lot more
11 responsibility than just getting in a truck and, you know,
12 driving, you're responsible for people and people's lives and
13 everything. And I said, "Is this something you really want to
14 do?" He says, "Yeah, I'm thinking about it. I think I want to
15 be a dispatcher." I never offered him a job though because he
16 never had any dispatching experience, he's a driver.

17 MR. COXSON: Okay.

18 THE WITNESS: He's a professional CDL driver.

19 BY MR. COXSON:

20 Q And you mentioned you already had a dispatcher at that
21 time?

22 A Yes, I had Lisa Schmetzel working in the office as a
23 dispatcher.

24 Q Did Mr. Salazar's employment at Corrugated Logistics end
25 at some point?

1 A Yes.

2 Q Okay. And how did that come about?

3 A After a thorough and long investigation I got a call from
4 corporate office that they decided --

5 JUDGE GIANNASI: Well, wait a minute. You got a call from
6 corporate office?

7 THE WITNESS: I'm sorry, Tina Overstreet, the safety
8 director.

9 JUDGE GIANNASI: All right.

10 THE WITNESS: And the bills kept coming in and they added
11 up to be about \$80,000 in damages. They kept coming in even
12 after the accident happened.

13 JUDGE GIANNASI: Okay.

14 THE WITNESS: So it was decided by Tina Overstreet and Tom
15 Olshefski to let Christian go.

16 JUDGE GIANNASI: All right. And how were you notified?

17 THE WITNESS: Tina Overstreet called me.

18 JUDGE GIANNASI: Okay. And you say there were bills of
19 \$80,000?

20 THE WITNESS: Yes.

21 JUDGE GIANNASI: For the damage from that December
22 accident?

23 THE WITNESS: Yes, from that accident. The trailer was
24 totally damaged.

25 JUDGE GIANNASI: Okay.

1 THE WITNESS: The labor was --

2 JUDGE GIANNASI: Do you have insurance?

3 THE WITNESS: Yes, the company has insurance.

4 JUDGE GIANNASI: And you're saying that that is not
5 covered by insurance?

6 THE WITNESS: I'm not in that department, but the trailer
7 was totally -- it was totaled, it wasn't worth getting fixed, I
8 mean --

9 JUDGE GIANNASI: This was a trailer that was leased to you
10 by one of the companies that you leased trailers from?

11 THE WITNESS: Yes. The damages -- the labor alone, I had
12 an e-mail from the vendor, Tim Markert (ph) from Hale Trailer,
13 he said the labor alone would be \$7,000 on that specific
14 trailer, that's not even including the parts or anything. The
15 trailer it just wasn't worth that much. It was an older
16 trailer. And the tractor also, the tractor was almost \$30,000
17 in damages, and then his medical bills.

18 BY MR. COXSON:

19 Q Ms. Powell, you were just talking about an e-mail that you
20 received from Tim Markert?

21 A Yes.

22 Q Is this the e-mail that you were referring to?

23 MR. COXSON: Oh, I'm sorry.

24 JUDGE GIANNASI: What is this exhibit?

25 COURT REPORTER: R-10.

1 JUDGE GIANNASI: R-10, okay.

2 **(Respondent Exhibit 10 marked for identification.)**

3 THE WITNESS: Yes, this is the e-mail that I received in
4 February. Again, when our equipment is damaged we don't get
5 the -- we don't jump on it right away to get it fixed because
6 it costs money and we have to maintain -- I have to maintain
7 certain numbers for the month. And in this e-mail Tim is
8 actually saying -- I said --

9 JUDGE GIANNASI: Well, the e-mail speaks for itself. This
10 is from the company that you leased the trailer from?

11 THE WITNESS: This is from our mechanic that we have that
12 works on our trailers that comes --

13 JUDGE GIANNASI: This is the mechanic that works for Pratt
14 Logistics?

15 THE WITNESS: We kind of leaved out a mechanic, he works
16 for Hale Trailer, so we -- because we don't have our own
17 maintenance facility on-site like a lot of major carriers do.
18 We lease out the business and we leased it out to the Hale
19 Trailer to come and work on our trailers.

20 JUDGE GIANNASI: I see, all right. And you got this e-
21 mail on the date on this?

22 THE WITNESS: Yes.

23 BY MR. COXSON:

24 Q Ms. Powell, now after you received this e-mail do you know
25 whether the company went ahead and fixed it or not?

1 A No, we didn't fixed it, we scraped the whole trailer
2 because it would have cost more to fix the trailer than the
3 trailer was actually worth.

4 Q Thank you.

5 A We used it for parts.

6 MR. COXSON: Respondent moves GC exhibit -- oh, I'm sorry,
7 Respondent Exhibit 10 is it?

8 COURT REPORTER: Yes.

9 MR. COXSON: Ten.

10 JUDGE GIANNASI: Received.

11 **(Respondent Exhibit 10 received in evidence.)**

12 JUDGE GIANNASI: Well, let me ask you that. But this was
13 a trailer that was owned by somebody else and you just leased
14 it.

15 THE WITNESS: Uh-huh.

16 JUDGE GIANNASI: What do you mean that you scraped it?

17 THE WITNESS: I'm not in the safety department, but I
18 believe -- I don't know if -- I don't -- I'm not sure, I'm not
19 in that department.

20 JUDGE GIANNASI: Okay, all right. And you don't know
21 about any insurance coverage for this --

22 THE WITNESS: No.

23 JUDGE GIANNASI: -- accident?

24 THE WITNESS: No, that would be Tina Overstreet.

25 JUDGE GIANNASI: Okay. Did I receive R-10?

1 COURT REPORTER: Yes.

2 JUDGE GIANNASI: This is a group exhibit. This is a group
3 exhibit?

4 MR. COXSON: Yes it is, Your Honor.

5 JUDGE GIANNASI: Okay.

6 MR. COXSON: I just want to -- if I could tie up the last
7 line of questioning there on Mr. Salazar.

8 BY MR. COXSON:

9 Q Did you inform him that he was being terminated?

10 A Yes, I did.

11 Q And tell me about that? When did that happen?

12 A It happened on a Friday and Christian had just came back
13 from his run and Erin Cutler, the HR manager, and myself, we
14 were in my office and I told Christian that we needed to
15 discuss something with him and we brought him in the office and
16 told him that after a long and thorough investigation we -- it
17 was decided by corporate to terminate him based on the accident
18 that he had on December 29th.

19 Q Did you have any role in the decision process at that
20 point?

21 A No, that came from Tom Olshefski and Tina Overstreet.

22 Q Okay.

23 **(Respondent Exhibit 11 marked for identification.)**

24 MR. COXSON: Looking at the document that's been placed in
25 front of you, Respondent's Exhibit 11, it's a packet of

1 disciplinary reports.

2 BY MR. COXSON:

3 Q Can you just tell me what these are?

4 A Yes. These are disciplinary action reports for several of
5 my drivers.

6 Q Okay. And which drivers?

7 A William Lengle, Jay Lehrman, William Lehuta.

8 Q Now, did you either sign or review each of these
9 disciplines?

10 A Yes, I went over each one with the driver.

11 Q And did you communicate each of these disciplines to Mr.
12 Olshefski?

13 A Yes, I did.

14 Q When did you do that?

15 A Each time that I discipline a driver I let Tom know
16 immediately what happened. I let him know the day of. I just
17 like to keep the communication open between both of us so I
18 talk to him several times a day. So anything that I'm doing at
19 the facility and he's not onsite I let him know.

20 JUDGE GIANNASI: Now, what is the last page of this
21 document?

22 THE WITNESS: This one?

23 JUDGE GIANNASI: The handwritten --

24 THE WITNESS: The very last page is William Lehuta putting
25 his version and his comments down and it wasn't enough to put

1 it on -- let me see if it's the sheet prior. Yes. On the
2 sheet prior --

3 JUDGE GIANNASI: So this is his comments on the
4 discipline, on the warning?

5 THE WITNESS: On that last page, yes, he handwrote that.

6 JUDGE GIANNASI: Okay. Do you want to move this?

7 MR. COXSON: Yes, please, Your Honor.

8 JUDGE GIANNASI: Any objection?

9 MS. BROWN: No objection.

10 JUDGE GIANNASI: Received.

11 **(Respondent Exhibit 11 received in evidence.)**

12 BY MR. COXSON:

13 Q Ms. Powell, did there come a time at the end of April when
14 Corrugated Logistics relied more heavily on outsource carries
15 than its own drivers?

16 A Yes. Throughout the year of -- the beginning of 2012 we
17 had so many incidents with trailers and equipment damage that I
18 was informed in April that they decided to restructure.

19 Q Okay. And about when was that that you were informed of
20 that decision?

21 A Around the end of April. I don't know -- I don't remember
22 the exact date.

23 Q Who informed you of that decision?

24 A Tom Olshefski.

25 Q And how did he inform you?

1 A He told me that the guys are just wrecking too much stuff,
2 I mean, from dragging tires, from the trailer damage, the
3 tractor damage we're incurring too much cost and we're not
4 making any money.

5 The general manager was complaining about us servicing his
6 customer and that he -- Tom decided to go with outside
7 carriers, third-party carriers, because they would be made to
8 sign an interchange agreement, and if they damaged the trailer
9 they would have to pay for it. It kind of took some of the
10 liability off us and put it on the third-party carries. They
11 damage the equipment they had to pay for it.

12 Q And did Tom instruct you as to how he wanted you to help
13 him carry out the restructuring?

14 A He told me that I would have to let a group of drivers go.

15 Q And did he tell you what the basis for letting that group
16 of drivers go? How he came to the decision as to which drivers
17 were being let go?

18 A Yes.

19 Q Okay. What did he tell you?

20 A He kept the five senior drivers, the drivers that had the
21 least amount -- the better performance records. And it's my
22 understanding the drivers that were still on probationary
23 periods were -- was to be let go, and the drivers with the
24 disciplinary actions here.

25 JUDGE GIANNASI: But you say it was your understanding.

1 Did he tell you how to get -- which drivers that were supposed
2 to go? Did he name them by name?

3 THE WITNESS: He told me to pick the five senior drivers,
4 and we went over the names of the drivers, yes. The drivers
5 that were --

6 JUDGE GIANNASI: So he decided the number 5?

7 THE WITNESS: Yes.

8 JUDGE GIANNASI: All right. I want to know the
9 conversation that you had, what he said and what you said.

10 THE WITNESS: He said that we're deciding to go with
11 third-party carries. These drivers are just banging up too
12 much of the equipment and it's costing us a lot of money to
13 maintain.

14 JUDGE GIANNASI: So he told you to go keep the five senior
15 drivers?

16 THE WITNESS: Yes. There's actually four senior drivers
17 and we had a yard jockey that worked at night, Eric Balsovich
18 (ph), he works -- he kind of did the nighttime jockeying so we
19 kept him on as the nighttime jockey which he's still doing
20 today.

21 JUDGE GIANNASI: Well, what did Tom tell you? Did he tell
22 you to keep the five senior drivers? Did he tell you to keep
23 the yard jockey at night, or did you decide that?

24 THE WITNESS: He told me to keep the five -- he told me to
25 keep the four senior drivers and the yard jockey at night.

1 JUDGE GIANNASI: So he said that?

2 THE WITNESS: Yes.

3 JUDGE GIANNASI: All right.

4 BY MR. COXSON:

5 Q How did the operations continue after you implemented that
6 -- those layoffs?

7 A The layoffs actually happened in my office with Erin
8 Cutler, the HR manager, and she actually told each driver
9 individually that they were -- that we were restructuring the
10 company. It was on a Friday and that Monday we had the third-
11 party carriers ready to go as if nothing ever happened, there
12 was no hiccups. Jay Baldwin was happy, nothing --

13 JUDGE GIANNASI: Who is Jay Baldwin?

14 THE WITNESS: Jay Baldwin is the general manager of the
15 Corrugated Allentown.

16 JUDGE GIANNASI: Okay. So by Monday morning you had the
17 three -- what did you say?

18 THE WITNESS: Third-party carriers.

19 JUDGE GIANNASI: The third-party carriers.

20 THE WITNESS: In place and ready --

21 JUDGE GIANNASI: Were you responsible for getting for
22 getting those third-party carriers?

23 THE WITNESS: Tom -- me and Tom Olshefski was involved in
24 it.

25 JUDGE GIANNASI: When did you start doing that?

1 THE WITNESS: I didn't start doing it, Tom started -- I
2 guess he started working behind the scenes. I wasn't involved
3 with restructuring.

4 JUDGE GIANNASI: Well, so how did -- so did you have
5 anything to do with getting the third-party carriers?

6 THE WITNESS: I used some carriers that we had before, but
7 Tom got USX to come in and they're still there to this day.

8 JUDGE GIANNASI: But on Monday morning how many third-
9 party carriers were there on Monday morning?

10 THE WITNESS: We had twelve extra drivers along with the
11 five that we had. That was including NFI guys that had worked
12 for us before and USX drivers.

13 JUDGE GIANNASI: And those -- I mean, did you do anything
14 to get those drivers or those companies to come in on Monday
15 morning?

16 THE WITNESS: Tom did most of that, Tom did that.

17 JUDGE GIANNASI: You said, "most of that", how much did
18 you do?

19 THE WITNESS: I spoke to some of the drivers that returned
20 from NFI, National Freight Industry, because I used to work
21 there, but the USX -- U.S. Express drivers Tom Olshefski did
22 that. He had all of them set up.

23 JUDGE GIANNASI: So did you call NFI?

24 THE WITNESS: Yes. After --

25 JUDGE GIANNASI: When did you do that?

1 THE WITNESS: On Friday after I found out about
2 everything.

3 JUDGE GIANNASI: Well, was that before or after you told
4 the drivers that you would be letting them go?

5 THE WITNESS: This was the same day.

6 JUDGE GIANNASI: The same day? Before or after you --

7 THE WITNESS: Friday, Friday, because I found out --

8 JUDGE GIANNASI: Well, what time during the day on Friday?

9 THE WITNESS: Around --

10 JUDGE GIANNASI: A lot was going on on Friday, right?

11 THE WITNESS: Yes, around 3:00 p.m. 4:00 p.m., it was
12 later on in the day.

13 JUDGE GIANNASI: Okay. And then -- so how many companies
14 did you call to get drivers?

15 THE WITNESS: I called the National Freight Industries. I
16 used to work there and that was the carrier that actually
17 started us up so I was familiar with them. So we had three or
18 four drivers from that facility and the rest came from U.S.
19 Express.

20 JUDGE GIANNASI: Okay. Go ahead.

21 MR. COXSON: Ms. Powell, I just handed you a document
22 that's been previously entered into evidence as General
23 Counsel's Exhibit 9, and it's a photograph.

24 BY MR. COXSON:

25 Q Are you familiar with this?

1 A Yes.

2 Q What is this?

3 A This is a hiring poster that we had attached to a pallet.

4 Q Where? Well, let me ask you this. When was it first
5 attached to a pallet?

6 A We first started up, when I started, again and we had a
7 dispatcher from Valparaiso, Indiana helping us out, he attached
8 this to a pallet, and we were inside a trailer at the time, he
9 attached it to a pallet and he set it outside up against a
10 trailer that we were in, we were not inside the building.

11 Q And how long was this sign attached to the pallet?

12 A The sign was attached to the pallet up to the day that we
13 -- the restructuring happened and the drivers were let go.
14 This sign has nothing to do with me hiring drivers, I mean, the
15 drivers that I got worked for Corrugated Logistics, I had
16 driver fares, I came in on Saturday to try to recruit drivers
17 to come into my facility, or it was word of mouth from driver
18 to driver. This number that's on here goes to our Georgia
19 facility.

20 Q And you had mentioned earlier that you were only informed
21 of the restructuring decision --

22 A Prior to the day the drivers were let go.

23 Q And was this sign taken down at some point?

24 A Yes, after we let the drivers go.

25 Q Okay.

1 A When I took the sign down also the sign was on the side of
2 the steps. You have steps leading up into the facility, it was
3 just leaning up aside the steps like this.

4 Q That's where it was located?

5 A Yes, when I went to remove the sign up against the pallet.

6 Q Okay. And when you say "to the side of the steps" which
7 steps are you talking about?

8 A The steps to get in to the facility, it was out of sight,
9 it was just leaning up against the steps.

10 Q Thank you.

11 A It wasn't like on a marquee or anything.

12 **(Respondent Exhibit 12 marked for identification.)**

13 BY MR. COXSON:

14 Q Ms. Powell, do you recognize what's been marked as
15 Respondent's Exhibit 12?

16 A Yes.

17 Q And this is a driver application for Michael Messina?

18 A Yes.

19 Q And did you review this application prior to hiring Mr.
20 Messina?

21 A Yes, I did.

22 MR. COXSON: Respondent's enter -- or move Respondent's
23 Exhibit 10 into evidence.

24 JUDGE GIANNASI: Twelve.

25 MR. COXSON: Oh, 12, I'm sorry.

1 MS. BROWN: No objection.

2 JUDGE GIANNASI: Received.

3 **(Respondent Exhibit 12 received in evidence.)**

4 MR. COXSON: Your Honor, can we take just a five minute
5 break?

6 JUDGE GIANNASI: All right.

7 MR. COXSON: Thank you.

8 JUDGE GIANNASI: We'll be in recess for five minutes.
9 **Off the record.**

10 **(Whereupon, a brief recess was taken.)**

11 **JUDGE GIANNASI: Back on the record.**

12 MR. COXSON: Just a few more questions, Your Honor.

13 **DIRECT EXAMINATION (continued)**

14 BY MR. COXSON:

15 Q Ms. Powell, are you familiar with an individual by the of
16 Francisco Ortiz?

17 A Yes, I know who he is.

18 Q Okay. Who is that?

19 A He is one of the shipping -- the second shift shipping
20 supervisors.

21 Q For which company?

22 A For the Corrugated in Allentown.

23 Q Okay. And did you ever tell him that Guillermo Mejia or
24 Christian Salazar had been fired for union activity?

25 A No, I don't discuss anything with my customer regarding

1 Corrugated Logistics. I don't discuss anything with them.

2 Q And does Francisco Ortiz have any role in the disciplinary
3 actions of Corrugated Logistics drivers?

4 A No, he has nothing to do with my operation. He's only in
5 charge of like three people, the forklift drivers for the
6 Corrugated in Allentown, he's not even a manager. So, no.

7 MR. RODRIGUEZ: I'm going to object. We have a
8 stipulation that he's an agent, I mean --

9 JUDGE GIANNASI: Yeah, but that doesn't --

10 MR. RODRIGUEZ: Okay.

11 JUDGE GIANNASI: -- prevent testimony about his status.

12 MR. RODRIGUEZ: Okay.

13 MR. COXSON: Your Honor, no further questions.

14 JUDGE GIANNASI: Okay. Cross?

15 MS. BROWN: May we have a few minutes, Your Honor?

16 JUDGE GIANNASI: Okay.

17 MS. BROWN: May we have 10 minutes?

18 JUDGE GIANNASI: You just had 10 minutes.

19 MR. RODRIGUEZ: We just had less than that, we had about
20 five minutes.

21 MR. COXSON: It was 10 actually.

22 MR. RODRIGUEZ: No. Your Honor, this is a critical
23 witness for the Respondent and we'd just like a little bit more
24 time to get ready, and this is the last witness of the day.

25 JUDGE GIANNASI: All right, I'll give you five minutes.

1 Off the record.

2 (Whereupon, a brief recess was taken.)

3 JUDGE GIANNASI: Back on the record.

4 CROSS-EXAMINATION

5 BY MR. RODRIGUEZ:

6 Q Ms. Powell, how are you today?

7 A I'm fine, thank you.

8 Q Okay. I just -- first I want to ask you a little bit
9 about some exhibits that you were shown, particularly the
10 disciplinary reports issued to Guillermo Mejia. I'm going to -
11 - do you have them with you?

12 A Yes, I think so.

13 Q Okay.

14 A Yes.

15 Q Can you go to General Counsel's Exhibit 10? All right.
16 Under "Nature of incident, 19 other" you put "Lost focus on
17 tandem". That's' your handwriting, right?

18 A Yes.

19 Q What does lost focus on tandem mean?

20 A These are Guillermo's words, this is what he told me. He
21 said he lost focus on the tandem. The tandem is the nose of
22 the -- describing the parts of the trailer, you have a nose and
23 you have a tail. The tandem is up front where you hook the
24 hoses up from the tractor to the trailer. He told me he lost
25 focus and that's why he dragged the legs that hold the trailer

1 up.

2 Q Okay. But he told you that but you wrote it down, right?

3 A Yes, I wrote it down and he signed it.

4 Q Now I want to go to General Counsel's Exhibit 11. The
5 same place under "other" it says "verbal".

6 A Yes.

7 Q What does verbal mean?

8 A This is a verbal counseling that I gave Guillermo because
9 I had spoken to him on several other occasions about reporting
10 information to my customer. I didn't write him up before, I
11 just tried to speak to him about it. So he came into my
12 office, this is a verbal warning, a verbal counseling that I
13 gave him.

14 Q And on this issue you say you talked to him several times
15 about communicating directly issues to the customer at
16 Allentown. Who was the person that usually communicated with -
17 - that you had a problem with? The customer, you said there
18 was a name, the person from Allentown that would call him and
19 ask him and ask him about the trailers.

20 A There's several different people that will call him and
21 ask him.

22 Q Okay.

23 A The shipping manager, shipping supervisors, the --

24 Q And you work in the same facility with them don't you?

25 A Yes, I do.

1 Q Okay. And you have communication with them?

2 A I can, yes.

3 Q Okay.

4 A If they ask me.

5 Q And you know who they are, right?

6 A Yes.

7 Q Okay. And why didn't you -- why did you allow these
8 customers to contact Guillermo directly?

9 A Because Guillermo was the yard jockey, Guillermo was
10 moving the trailers around in the yard for them. They're not
11 going to come to first and say, "I need trailer", in this case,
12 in one of the cases that I wrote him up, "I need trailer 44
13 moved to door 33." They won't come to me to ask me that,
14 they're going to talk on the talkie directly to the yard
15 jockey.

16 Q Right. But you testified that you wanted Mejia to run
17 everything by you from the customers first before he did
18 everything, so why didn't you have them contact you first?

19 A I said I wanted Guillermo to come to us before going to
20 the customer. The customer doesn't have to come to me first.
21 If they need a trailer moved they go to the yard jockey. If
22 they ask Guillermo a specific question about equipment
23 Guillermo needs to come to me first, Guillermo does not need to
24 answer that question to my customer. I need to be talking
25 directly to my customer. If they're telling him to just move a

1 trailer around in the yard they wouldn't come to me for that,
2 they will go to the yard jockey; that is his job.

3 Q So why didn't you tell them that they could only contact
4 Guillermo about moving trailers around?

5 MR. COXSON: Objection, asked and answered.

6 JUDGE GIANNASI: Sustained.

7 BY MR. RODRIGUEZ:

8 Q Ms. Powell, what hours do you regularly work?

9 A I get in about a quarter to seven and I'm there sometimes
10 till after 6:00 p.m.

11 Q Okay. And isn't it true that Mejia would arrive around
12 6:00 in the morning?

13 A He arrived at different times; it depends on when the
14 corrugated started. We would -- I would tell him to come in at
15 different times.

16 Q Weren't there times where he would arrive --

17 MR. COXSON: Objection, Your Honor. They have to let the
18 Witness finish her answers.

19 JUDGE GIANNASI: Correct. Let the Witness finish the
20 answer.

21 MR. RODRIGUEZ: Go ahead.

22 THE WITNESS: He will come in at different times depending
23 on when the shipping management started his shift. It could be
24 at 3:00 a.m., it could be at 4:00 a.m., it could be a 5:00 a.m.
25 It wasn't the same time every single day.

1 MR. RODRIGUEZ: Okay.

2 BY MR. RODRIGUEZ:

3 Q So there were times when he arrived to work before you
4 did, right?

5 A Yes.

6 Q Okay. And if he was asked a question at that time by the
7 customer what was he supposed to do?

8 A If he didn't know the answer, I have a cell phone, I'm on-
9 call 24 hours, he could have called me. He knew that I did not
10 want him giving them false information or information that's
11 not factual because it came back on me from the customer. I
12 was pretty much reprimanded from his decisions. He is a yard
13 jockey, he is not a supervisor. If they ask him a question
14 other than moving a trailer around he should call me, I am
15 available 24/7.

16 Q If he doesn't have a trailer -- if they ask him to move a
17 trailer and he says -- and he knows that there are no trailers
18 what is he supposed to tell him?

19 MR. COXSON: Objection. That's a hypothetical, Your
20 Honor.

21 JUDGE GIANNASI: Overruled.

22 MR. RODRIGUEZ: Your Honor --

23 THE WITNESS: Can you repeat the question?

24 BY MR. RODRIGUEZ:

25 Q If a customer calls Guillermo --

1 A While I'm not there.

2 Q -- while you're not there, there are no trailers to move,
3 he can't move a trailer for them and they're calling him back
4 to move a trailer, what is he supposed to do?

5 A He does not move the trailer.

6 Q So he just ignores them or he tells them, "I have no
7 trailer to move"?

8 A Yes, at that point in time, yes.

9 Q Okay.

10 A But if I'm in the office he still needs to come to me.

11 Q Okay. Now I want you to move to the other disciplines. I
12 think it's General Counsel's Exhibit 12 and 13. You said that
13 you handed these to Mejia on the day you discharge him,
14 correct?

15 A Yes.

16 Q Okay. Isn't it regular practice when an employee refused
17 to sign --

18 MR. COXSON: Objection, it's hypothetical, it's not --

19 JUDGE GIANNASI: Overruled.

20 BY MR. RODRIGUEZ:

21 Q Isn't it regular industry practice when an employee
22 refuses to sign a disciplinary report or a write-up to put
23 "Refused to sign" where their signature would regularly go?

24 A No, it doesn't happen like that at all facilities.

25 Q Okay. Have you done that before?

1 A Not at this facility, no.

2 Q No, my question wasn't that specifically. Have you ever
3 put, "Refused to sign" --

4 A Yes, I've done it once or twice.

5 MR. COXSON: Objection.

6 MR. RODRIGUEZ: Thank you.

7 MR. COXSON: Relevance.

8 JUDGE GIANNASI: Yeah, I don't know that I can put much
9 stock in that. It doesn't matter what other facilities do.
10 Mr. Rodriguez, are you listening?

11 MR. RODRIGUEZ: Yes.

12 JUDGE GIANNASI: I don't think that I'm going to rely on
13 that.

14 MR. RODRIGUEZ: Okay.

15 BY MR. RODRIGUEZ:

16 Q And on General Counsel's Exhibit 12 it says here, "Date of
17 incident, 4/16", and the day you signed it was 4/24. Now you
18 testified that this was a very serious offense; that a driver
19 could have been killed and you found out about it that day.
20 Why didn't you --

21 MR. COXSON: Objection. That is misrepresenting what was
22 stated in evidence.

23 MR. RODRIGUEZ: Your Honor, she said that the trailer
24 could have fallen on top of the driver.

25 MR. COXSON: No she didn't, Your Honor.

1 JUDGE GIANNASI: Well, I'm going to let him ask the
2 question. Go ahead.

3 MR. RODRIGUEZ: Okay.

4 BY MR. RODRIGUEZ:

5 Q Now, you testified that this violation was very serious,
6 that the safety of the driver could have been harmed that was
7 in jeopardy. Why did you wait over a week to give him this
8 warning? To write this warning?

9 A When I told Guillermo to lock the trailer down on the 16th
10 I thought he had done the directive that I gave him. I found
11 out several days later from my dispatch manager, Christian
12 Westgate, that he did not lock it down, that another driver
13 took it back out on the road, endangering him -- endangering
14 the driver that had the trailer and anybody on the road.
15 Again, if he had dropped this trailer at a customer and it was
16 to go get unloaded while he was detached from it, the tractor
17 and the trailer, the whole thing could have collapsed, the
18 dolly legs were badly damaged. And I thought he had done what
19 I asked him to do.

20 Q Do you know how much it costs to hire a driver?

21 A No.

22 Q When you hire a driver what's the procedure?

23 A I take the application, I over -- I look at it, and then I
24 send it down to my corporate office and they -- Tina runs --
25 Tina Overstreet runs and NBR background check. I'm not

1 involved in the background work I just interview the driver. I
2 get the application and I send it to corporate.

3 Q And isn't it true they have to get drug tested, urine
4 tested?

5 A Yes.

6 Q Okay. And who pays for that?

7 A Again, I'm in charge of -- I don't handle those bills or
8 anything, that is done through our safety director Tina
9 Overstreet.

10 Q But do you know if the company pays for it or the employee
11 pays for it?

12 A Tina Overstreet handles that. All I do is send the driver
13 to get the drug test done.

14 Q Okay. Didn't Eric Balsovich have an accident where he
15 dropped the trailer and damaged landing gear?

16 A I don't recall that happening.

17 Q Is there somebody in management called -- whose first name
18 is Wayne that has an office next to Jay Baldwin?

19 A He doesn't work for Corrugated Logistics.

20 Q Okay. Who is he?

21 A He works -- he's on the board of directors for Conyers,
22 Georgia.

23 Q Okay.

24 A That's his main facility, Conyers, Georgia.

25 Q And what is his name? Wayne?

1 A Vallis (ph).

2 Q Wayne Vallis, okay.

3 JUDGE GIANNASI: And he has an office at your location?

4 THE WITNESS: He has a -- it's not a permanent office.

5 When he comes to visit he needs somewhere to work, to set up

6 shop, so he -- they give him a room, but his office is in

7 Conyers, Georgia. He sits on the board of directors.

8 BY MR. RODRIGUEZ:

9 Q And doesn't Wayne Vallis live right next door to Dragan
10 Tervich (ph)?

11 MR. COXSON: Objection, Your Honor.

12 THE WITNESS: I don't know where Wayne lives.

13 MR. COXSON: It's irrelevant --

14 MR. RODRIGUEZ: If she knows.

15 MR. COXSON: -- and it's beyond the scope of direct.

16 THE WITNESS: I don't know where Wayne --

17 JUDGE GIANNASI: Who are these people?

18 MR. RODRIGUEZ: Dragan Tervich is one of the drivers that
19 was kept on.

20 JUDGE GIANNASI: Okay. And who is the other fellow?

21 MR. RODRIGUEZ: Wayne Vallis she just testified is a board
22 of directors for one of the companies.

23 JUDGE GIANNASI: I'm going to permit the question, I'll
24 permit the question. Go ahead.

25 THE WITNESS: I don't know where Wayne lives.

1 MR. RODRIGUEZ: Okay.

2 BY MR. RODRIGUEZ:

3 Q Didn't Dragan Tervich rip the door from a brand new
4 trailer?

5 A Dragan did. The door did come off the hinges.

6 Q Okay. And --

7 JUDGE GIANNASI: And who is this person?

8 MR. RODRIGUEZ: Dragan Tervich is one of the drivers.

9 JUDGE GIANNASI: That was retained?

10 MR. RODRIGUEZ: That was retained.

11 JUDGE GIANNASI: All right. I mean, how do you know that
12 he was retained? Is it in the record?

13 MS. BROWN: Yes.

14 JUDGE GIANNASI: All right. Was he retained?

15 THE WITNESS: Yes, he's one of the drivers that was
16 retained.

17 JUDGE GIANNASI: Still working there?

18 THE WITNESS: Yes.

19 MR. RODRIGUEZ: Okay.

20 JUDGE GIANNASI: How many drivers do you have now by the
21 way?

22 THE WITNESS: With everybody that came back I have 11 CDL
23 drivers, one quit, Mike Messina quit the day before I came
24 here.

25 BY MR. RODRIGUEZ:

1 Q Now, I want to ask you about -- you said you had a
2 dispatcher, her name was Liz Schmetzel.

3 A Lisa Schmetzel.

4 Q Lisa Schmetzel, I'm sorry.

5 JUDGE GIANNASI: I'm sorry, I missed the -- what's her
6 title?

7 MR. RODRIGUEZ: Dispatcher.

8 BY MR. RODRIGUEZ:

9 Q Is that correct?

10 A She was a dispatch manager, yes.

11 Q Okay. And wasn't she let go in January?

12 A She was let go around February.

13 Q February. And then Chris Westgate was the next dispatcher
14 wasn't hired till mid-March, correct?

15 A Yes.

16 JUDGE GIANNASI: Is Westgate still with you?

17 THE WITNESS: Yes.

18 BY MR. RODRIGUEZ:

19 Q And you said that you taught Christian Salazar how to use
20 the dispatching system, right?

21 A I went over that and I even went over that with Christian
22 Salazar and we had a -- someone from corporate come in to help
23 the drivers learn how to use the on-board computers. She also
24 went over it with Christian.

25 Q Was that Vicki Howard?

1 A Yes.

2 Q And where did she come from?

3 A She came from Michigan.

4 Q Okay.

5 A She's -- her offices are in Michigan.

6 Q Okay. And did she come to the Macungie facility solely to
7 train Christian Salazar?

8 A No, she came there to train the drivers on how to use the
9 on-board PeopleNet, the PeopleNet unit. We were having issues,
10 it was new to the drivers that were there so she came there, we
11 were having a lot of errors, these are electronic logs. The
12 drivers were used to using paper logs where they handwrote
13 everything, so she came there to go over everything with the
14 drivers.

15 JUDGE GIANNASI: When did this electronic log system, when
16 was it instituted?

17 THE WITNESS: It was around January, 2012.

18 JUDGE GIANNASI: Are you still using that?

19 THE WITNESS: Yes.

20 JUDGE GIANNASI: How about the leased trucks, do they
21 still have that system, your system on their trucks?

22 THE WITNESS: Yes. The tractors that we lease from
23 Penske?

24 JUDGE GIANNASI: Yes.

25 THE WITNESS: Yes. We just had some more installed with

1 the drivers that came back. We also had drivers put those in
2 also. Vickie came out for that reason too, to retrain the
3 drivers that were just brought back in.

4 MR. RODRIGUEZ: Okay. And I want to move to conversation,
5 the interaction you had with Tom Olshefski about laying off the
6 driver.

7 BY MR. RODRIGUEZ:

8 Q When was it that he called you and told you that there
9 needed to be a layoff?

10 A The day before we let the drivers go.

11 Q So it was April 26th?

12 A It was on the Thursday, I don't remember the day. It was
13 on the Thursday and we let the drivers go that Friday.

14 Q Okay. And what did he tell you?

15 A We're going to go with restructuring and these guys are
16 just banging up too much stuff, and we decided to go with a
17 third-party carrier because if they mess up the equipment
18 they're going to pay for it and it's going to save us a lot of
19 money in the long run.

20 Q Okay. And what instructions did he give you on the
21 layoff, how the layoff would work?

22 A He told me --

23 Q How you would select the drivers?

24 A We were going to retain five drivers, five of the more
25 seasoned drivers, and they're going to keep Eric on as the

1 nighttime jockey because he had been doing it all along at
2 night.

3 Q Okay. And what time on Thursday did he call you and tell
4 you this?

5 A I don't recall what time it was, it was last year, I don't
6 recall what time.

7 Q Do you remember if it was in the beginning of the day or
8 the end of the day?

9 A No.

10 Q Okay. So after he told you that he wanted to retain the
11 four more senior drivers and then -- and the night yard jockey,
12 did he --

13 MR. COXSON: Objection, Your Honor. I believe she said
14 "the most seasoned".

15 JUDGE GIANNASI: Overruled. Go ahead.

16 MR. COXSON: Oh, I'm sorry.

17 JUDGE GIANNASI: Go ahead.

18 BY MR. RODRIGUEZ:

19 Q Did he say how it worked with the discipline, because
20 there was -- you did take into account this employee discipline
21 in the layoff didn't you?

22 A Tom told me that we were going to retain the more -- four
23 of the more senior drivers and we were going to keep Eric on as
24 the nighttime yard jockey because he had been doing it all
25 along.

1 Q Okay. And what step -- after you had this conversation
2 what step did you take to select the drivers that were going to
3 be kept on?

4 A Tom went over this and he told me what we were going to
5 do, we were going to keep the four most senior driver, we were
6 going to keep -- since Eric had been the yard jockey at night,
7 we were growing; he was going to be kept on. He also decided
8 that the drivers that were still on probationary -- that had
9 just started with the company would also be let go.

10 Q So the -- are you -- is your testimony that he told you
11 which -- already he gave you the list of what employees you
12 needed to lay off?

13 A We -- he told me the four most senior drivers.

14 Q Okay. Now, I want to go step-by-step on this election
15 process, that's what I'm trying to get to here. Okay?

16 A Uh-huh.

17 Q Okay. So after you had this conversation with Tom
18 Olshefski what did you then do to decide which were the four
19 most drivers -- seasoned or senior drivers that you were going
20 to keep?

21 A We went by the hire dates.

22 Q Okay.

23 A And their experience.

24 Q So you did in tandem with him?

25 A Yes.

1 Q Okay. You were on the phone while you were selecting the
2 drivers?

3 A No, I wasn't on the phone with him while we were doing
4 this.

5 Q So you were doing it by yourself?

6 A He knew the drivers, I sent him my driver's list and he
7 called me back and that's what he had decided. This is what
8 we're going to do and how we're going to do it.

9 Q So you sent him a list of drivers?

10 A The list on my driver board.

11 Q And what did that list have on it?

12 A Their names and their hire dates and their addresses.

13 Q And that's it?

14 A Yes.

15 Q Okay.

16 JUDGE GIANNASI: Is there a hire list in evidence or do we
17 have --

18 MS. BROWN: Yes, Your Honor.

19 JUDGE GIANNASI: All right. What is that exhibit?

20 MS. BROWN: I'm --

21 JUDGE GIANNASI: Excuse me.

22 MS. BROWN: I'm sorry. It's in a position statement.

23 JUDGE GIANNASI: Oh.

24 MS. BROWN: It's Exhibit 4 and it's May 22, 2012 position
25 statement.

1 JUDGE GIANNASI: All right. Thank you.

2 MR. RODRIGUEZ: Okay.

3 BY MR. RODRIGUEZ:

4 Q So you sent him this list and then he picked the drivers?

5 A And he told me what to do.

6 Q Okay.

7 A The restructuring was done by Tom. I had -- I didn't have
8 anything to do with the restructuring.

9 Q So he picked the drivers --

10 JUDGE GIANNASI: I think you've exhausted this. I think
11 you've exhausted this.

12 MR. RODRIGUEZ: We're arguing on --

13 JUDGE GIANNASI: She testified what was done. If it
14 wasn't done according to your list you can make that argument
15 to me. You don't need any more information from this Witness.

16 MR. RODRIGUEZ: All right.

17 BY MR. RODRIGUEZ:

18 Q Didn't Wayne Webb have an accident in Staten Island?

19 A That wasn't --

20 JUDGE GIANNASI: Who is this person?

21 MR. RODRIGUEZ: Wayne Webb is another driver that we've
22 heard testimony about.

23 THE WITNESS: He was retained.

24 BY MR. RODRIGUEZ:

25 Q He was retained?

1 JUDGE GIANNASI: Okay.

2 THE WITNESS: That was determined that that was not
3 Wayne's fault. Wayne was not disciplined for that accident, he
4 was rear-ended.

5 BY MR. RODRIGUEZ:

6 Q Okay. But he did have an accident in Staten Island?

7 A That was not his fault.

8 Q I'm not asking if it was his fault.

9 A There was an accident in Staten Island.

10 Q And he was involved in that accident?

11 A Uh-huh.

12 Q Okay. And didn't you instruct Christian Salazar to call
13 the police to inquire about that accident?

14 A We were trying -- I forget what the circumstances were,
15 but Tina had asked me to try and get in contact and try to get
16 an accident report, to get the report from Staten Island. So
17 Christian was working in the office at the time, so I had a lot
18 of stuff going on, so, yes, I had him try to call the Staten
19 Island department to try to get a copy of the accident report.
20 He didn't have any luck getting it but, again, he was in the
21 office, it's not like I called him in the office and said,
22 "Christian, do this for me." He was working in the office at
23 the time.

24 Q Okay. Didn't you know Wayne Webb from your days at NFI?

25 A Yes.

1 Q Okay.

2 MR. RODRIGUEZ: No further questions.

3 JUDGE GIANNASI: Redirect?

4 MR. COXSON: Can we take a short break? Two minutes.

5 JUDGE GIANNASI: Two minutes, we'll stay in place. We'll
6 be off the record.

7 **(Whereupon, a brief recess was taken.)**

8 **JUDGE GIANNASI: Back on the record.**

9 MR. COXSON: Your Honor, Respondent has no further
10 questions.

11 JUDGE GIANNASI: Okay. I have one question.

12 This nighttime jockey that you refer to what are his
13 hours?

14 THE WITNESS: Right now he's working from 3:00 p.m. to
15 1:00 a.m. in the morning.

16 JUDGE GIANNASI: Okay. So you're not there at the time?

17 THE WITNESS: No.

18 JUDGE GIANNASI: Okay. All right, you're excused. You
19 may go.

20 **(Whereupon, the witness was excused.)**

21 JUDGE GIANNASI: Does Respondent rest?

22 MR. COXSON: Yes, Your Honor.

23 JUDGE GIANNASI: Off the record.

24 **(Whereupon, a brief recess was taken.)**

25 **JUDGE GIANNASI: Back on the record.**

1 Do you have anything further?

2 MS. BROWN: No, Your Honor.

3 JUDGE GIANNASI: Very good. So here's what I'm going to
4 do. I'm going to close the record, I'm on the record so you
5 may be seated.

6 MR. COXSON: Thank you, Judge.

7 JUDGE GIANNASI: And I'm going to ask you file briefs with
8 me by Friday, February 22nd. And those briefs should contain
9 the following: I want a -- first of all I want good briefs. I
10 want a general factual statement on the background of the
11 operations, chronologically what happened, including the "R"
12 case, and with record references.

13 And then for each allegation of the Complaint, that is the
14 8(1)s and the 8(3)s I want a section of facts, of specific
15 facts including record references, and included in that factual
16 statement I want a credibility argument, why you're view of
17 credibility ought to prevail over the other side's view of
18 credibility.

19 And then the next section of that would be the analysis.
20 Why it's a violation and then case citations, including
21 specific spot cites. I don't want the full page. This is one
22 of my pet peeves. People cite a decision, they cite the first
23 page and it's a 30 decision and the point is on page 28 and I
24 have to look through it.

25 And then I want you to tell me also about the election

1 case and its conclusion. That would be relatively easy because
2 there are no objections, it's just the challenges, and then
3 what remedy if any. And again, I expect the briefs by February
4 22nd.

5 So, if there is nothing further, and I thank you all for a
6 professional job well done, and I thank you also for your
7 patience. I've tried to move the case along. And your
8 professionalism. The hearing is closed.

9 **(Whereupon, 10:45 a.m. the hearing in the above-entitled matter**
10 **closed.)**

C E R T I F I C A T E

This is to certify that the attached proceedings done before
the NATIONAL LABOR RELATIONS BOARD REGION FOUR

In the Matter of:

**PRATT (CORRUGATED LOGISTICS), LLC, PRATT (ALLENTOWN
CORRUGATED), LLC, PRATT INDUSTRIES (USA), INC.,**

and

TEAMSTERS LOCAL 773.

Case Nos. **4-CA-079603, 4-CA-079858, 4-CA-079976, 4-RC-080108**

Date: January 17, 2013

Place: Philadelphia, Pennsylvania

Were held as therein appears, and that this is the original
transcript thereof for the files of the Board

Official Reporter

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